

# Exhibit 111

Miller, James E.

July 30, 2007

Chicago, IL

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE )  
PRICE LITIGATION ) MDL No. 1456  
-----) Civil Action  
This document relates to: ) No. 01-12257-PBS  
United States of America, )  
ex. rel. Ven-a-Care of the )  
Florida Keys, Inc., ) Hon. Patti Saris  
vs. )  
Abbott Laboratories, Inc., ) Magistrate Judge  
CIVIL ACTION NO. 06-11337-PBS ) Marianne Bowler  
-----X

VIDEOTAPED DEPOSITION OF

JAMES E. MILLER

CHICAGO, IL

JULY 30, 2007

Henderson Legal Services  
202-220-4158

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1	1 APPEARANCES: (CONTINUED)
2 Videotaped deposition of JAMES E. MILLER,	2 BERGER & MONTAGUE, P.C.
3 called by the Plaintiffs for examination, taken	4 BY: SUSAN SCHNEIDER THOMAS, ESQ.
4 pursuant to notice, agreement and by the provisions of	5 1622 Locust Street
5 the Rules of Civil Procedure for the United States	6 Philadelphia, Pennsylvania 19103
6 District Courts pertaining to the taking of	7 (215) 875-3000
7 depositions, taken before DEBORAH HABIAN, a Notary	8 on behalf of the Realtor, Ven-a-Care;
8 Public within and for the County of Cook, State of	9
9 Illinois, and a Certified Shorthand Reporter of said	10
10 State, at the offices of Katten Muchin Rosenman,	11 WEXLER TORISEVA WALLACE, LLP
11 525 West Monroe Street, 19th Floor, Chicago, Illinois,	12 BY: CHRISTOPHER J. STUART, ESQ.
12 on the 30th day of July, 2007, at 9:12 a.m.	13 55 West Monroe Street
13	14 Suite 300
14	15 Chicago, Illinois 60602
15	16 (312) 346-2222
16	17 on behalf of the State of Arizona
17	18 and the MDL Plaintiffs;
18	19
19	20
20	21
21	22 (CONTINUED)
Page 3	Page 5
1 APPEARANCES:	1 APPEARANCES: (CONTINUED)
2	2
3 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE	3 JONES DAY
4 BUREAU OF MEDI-CAL FRAUD & ELDER ABUSE	4 BY: TINA M. TABACCHI, ESQ.
5 BY: ELISEO SISNEROS, ESQ.	5 77 West Wacker Drive
6 DEPUTY ATTORNEY GENERAL	6 Chicago, Illinois 60601-1692
7 110 West A Street	7 (312) 782-3939
8 No. 1100	8 on behalf of the Defendants;
9 San Diego, California 92101	9
10 (619) 688-6043	10 KATTEN MUCHIN ROSENmann, LLP
11 on behalf of the State of California;	11 BY: GIL M. SOFFER, ESQ.
12	12 DEAN V. HOFFMAN, ESQ.
13 U.S. DEPARTMENT OF JUSTICE	13 525 West Monroe Street
14 COMMERCIAL LITIGATION, FRAUD	14 Chicago, Illinois 60661-3693
15 BY: REBECCA A. FORD, ESQ.	15 (312) 902-5200
16 601 D Street, N.W.	16 on behalf of the deponent.
17 Patrick Henry Building - 9133	17
18 Washington, D.C. 20044	18
19 (202) 514-1511	19 ALSO PRESENT:
20 on behalf of the United States;	20 ANTHONY MICHELETTO, VIDEOGRAPHER
21	21 HENDERSON LEGAL SERVICES
22 (CONTINUED)	22

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3	WITNESS: JAMES E. MILLER	PAGE	1	PROCEEDINGS
4	EXAMINATION BY ELISEO SISNEROS, ESQ.....	010	2	
5	EXAMINATION BY REBECCA A. FORD, ESQ.....	224	3	THE VIDEOGRAPHER: This is Anthony
6	EXAMINATION BY SUSAN SCHNEIDER THOMAS.....	311	4	Micheletto of Henderson Legal Services. I am the
7			5	operator of this camera.
8	EXHIBITS		6	This is the videotaped deposition of
9	NUMBER	DESCRIPTION	7	James Miller as being taken pursuant to Federal
10	Exhibit Miller 1160, curriculum vitae.....	012	8	Rules of Civil Procedure on behalf of the
11	Exhibit Miller 1161, subpoena duces tecum.....	046	9	Plaintiffs.
12	Exhibit Miller 1162, Abbott MWG lists.....	052	10	We are on the record on July 30th,
13	Exhibit Miller 1163, ABT 52840 to 52842,		11	2007. The time is 9:12, as indicated on the
14	ABT 52898 to 52899.....	069	12	video screen. We are located at 525 West Monroe
15	Exhibit Miller 1164, ABT 52705 to 52707,		13	Street, Chicago Illinois.
16	ABT 52710 to 52712,		14	This case is captioned In Re:
17	ABT 52808 to 52811,		15	Pharmaceutical Industry Average Wholesale Price
18	ABT 52836 to 52838.....	094	16	Litigation, Case No. 0112257-PBS.
19	Exhibit Miller 1165, handwritten notes.....	099	17	Will the attorneys please identify
20	Exhibit Miller 1166, ABT 52901 to 52903.....	193	18	themselves for the video record?
21	Exhibit Miller 1167, ABT 53315 to 53318.....	196	19	MR. SISNEROS: Eliseo Sisneros, Deputy
22	Exhibit Miller 1168, ABT 53161 to 53169.....	202	20	Attorney General for the State of California.
			21	MS. THOMAS: Susan Schneider Thomas
			22	representing Ven-a-Care.
			Page 7	Page 9
1	EXHIBITS (CONTINUED)		1	MR. STUART: Christopher Stuart, Wexler
2	NUMBER	DESCRIPTION	2	Toriseva Wallace representing the State of
3	Exhibit Miller 1169, 11/26/96 memoranda.....	216	3	Arizona and the MDL Plaintiffs.
4	Exhibit Miller 1170, ABT 53140 to ABT 53142....	264	4	MS. TABACCHI: Tina Tabacchi from Jones
5	Exhibit Miller 1171 ABT 53217 to ABT 53238....	266	5	Day on behalf of the Defendants.
6			6	MR. SOFFER: Gil Soffer of Katten
7			7	Muchin Rosenman on behalf of the deponent James
8			8	Miller.
9			9	THE WITNESS: James Miller.
10			10	THE VIDEOGRAPHER: The court -- the
11			11	court reporter is Deborah Habian from Henderson
12			12	Legal Services.
13			13	Please swear in the witness.
14			14	THE REPORTER: Please raise your right
15			15	hand, Mr. Miller.
16			16	(Witness sworn.)
17			17	THE REPORTER: Thanks.
18			18	MS. TABACCHI: Before we begin, I just
19			19	need to interject my standard objection to the
20			20	notice of the Class Plaintiffs as untimely.
21			21	MR. SISNERO: Morning, Mr. Miller.
22			22	THE WITNESS: Morning.

3 (Pages 6 to 9)

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<p>1</p> <p>2        JAMES E. MILLER,</p> <p>3 called as a witness herein by the Plaintiffs,</p> <p>4 having been first duly sworn, was examined and</p> <p>5 testified as follows:</p> <p>6</p> <p>7        DIRECT EXAMINATION</p> <p>8 BY MR. SISNERO:</p> <p>9        Q. Mr. Miller, what is your current</p> <p>10 address?</p> <p>11        A. New Smyrna Beach, Florida.</p> <p>12        Q. Have you ever had your deposition taken</p> <p>13 before?</p> <p>14        A. Yes.</p> <p>15        Q. How many times?</p> <p>16        A. Once.</p> <p>17        (Enter Ms. Rebecca Ford)</p> <p>18        Q. And what were the circumstances of that</p> <p>19 deposition?</p> <p>20        A. It was a product liability issue</p> <p>21 between Abbott and a vendor.</p> <p>22        Q. When was this?</p>	<p>1        A. Yes.</p> <p>2        Q. Okay. Is there any reason we can't go</p> <p>3 forward with this deposition this morning, any</p> <p>4 medical reason?</p> <p>5        A. No.</p> <p>6        MR. SISNERO: Okay. All right -- all</p> <p>7 right, could I this marked as Exhibit Miller</p> <p>8 1160, please?</p> <p>9        THE REPORTER: Sure.</p> <p>10        (Exhibit Miller 1160 was marked</p> <p>11 for ID)</p> <p>12 BY MR. SISNEROS:</p> <p>13        Q. All right, Mr. Miller, I've had marked</p> <p>14 and identified as Exhibit Miller 1160 to your</p> <p>15 deposition your CV. You've seen that before?</p> <p>16        A. Yes.</p> <p>17        Q. You prepared that document?</p> <p>18        A. Yes.</p> <p>19        Q. Okay. The -- excuse me.</p> <p>20        (Off record discussion)</p> <p>21 BY MR. SISNEROS:</p> <p>22        Q. All right, if we could just talk a</p>
Page 11	Page 13
<p>1        A. Early '80s.</p> <p>2        Q. What was the product?</p> <p>3        A. IV sets.</p> <p>4        Q. And the vendor?</p> <p>5        A. I do not remember.</p> <p>6        Q. All right. Well, then let me go over</p> <p>7 some -- briefly some of the ground rules.</p> <p>8        Although there is no judge here, there</p> <p>9 is no jury here, this proceeding is a very formal</p> <p>10 one because you have been put under oath. Do you</p> <p>11 understand that?</p> <p>12        A. Yes.</p> <p>13        Q. To the best of our ability, both of us</p> <p>14 should try to avoid talking over each other</p> <p>15 because the court reporter can only put down what</p> <p>16 one person speaks at a time. Do you understand</p> <p>17 that?</p> <p>18        A. Yes.</p> <p>19        Q. To the best of your ability, your</p> <p>20 responses should be audible expressions rather</p> <p>21 than a nod, an uh-huh, uh-uh, yes, no. You</p> <p>22 follow that?</p>	<p>1        little bit about your CV.</p> <p>2        Going back to your formal education</p> <p>3 starting with -- with your college, you graduated</p> <p>4 1968 from Wilmington College in Ohio; is that</p> <p>5 correct?</p> <p>6        A. That is correct.</p> <p>7        Q. And was your degree in Industrial</p> <p>8 Technology?</p> <p>9        A. Yes.</p> <p>10        Q. And, briefly, what -- what discipline</p> <p>11 is that, Industrial Technology?</p> <p>12        A. Industrial engineering.</p> <p>13        Q. Industrial engineering.</p> <p>14        A. (Witness nodding.)</p> <p>15        Q. Thereafter, your employment with Abbott</p> <p>16 began in 1972; is that correct?</p> <p>17        A. That is correct.</p> <p>18        Q. What did you do between 1968 and 1972?</p> <p>19        A. I worked for Ross Laboratory, a</p> <p>20 division of Abbott Laboratories, in Columbus,</p> <p>21 Ohio, and I went to grad school at Wright State</p> <p>22 University.</p>

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<p>1 Q. When you worked for Ross Labs, was that 2 right out of college?</p> <p>3 A. No. I worked -- I'm sorry. I worked 4 for Ford Motor Company in Claycomo, Missouri.</p> <p>5 Q. How long did you work for Ford?</p> <p>6 A. About nine months.</p> <p>7 Q. And what did you do for them?</p> <p>8 A. I was a Production Foreman.</p> <p>9 Q. After Ford, you went to Ross?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And -- well, let me ask this. When did 12 you graduate from Wilmington?</p> <p>13 A. December 1968.</p> <p>14 Q. When did you start working for Ford?</p> <p>15 A. January of 1969.</p> <p>16 Q. So you went over to Ross sometime in 17 the fall of '69?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And you remained at Ross until you 20 started at Abbott?</p> <p>21 A. No, MBA program. I went full-time to 22 the MBA program at Wright State University.</p>	<p>1 Q. Oh, I'm sorry. That's right there.</p> <p>2 A. Yeah.</p> <p>3 Q. Then what did you do between -- well, 4 when did you finish your master's, what year -- 5 what month in '71?</p> <p>6 A. I do not remember.</p> <p>7 Q. Did -- after completing your master's, 8 did you go directly to Abbott Labs?</p> <p>9 A. No.</p> <p>10 Q. What did you do next?</p> <p>11 A. When I was getting my master's, I also 12 was approached by National Cash Register and went 13 to work at National Cash Register while I was 14 finishing my master's in Dayton, Ohio.</p> <p>15 Q. How long did you work for NCR?</p> <p>16 A. I worked for them until December '72 17 when I went to work for Abbott.</p> <p>18 Q. What did you do for NCR?</p> <p>19 A. I was a Financial Analyst --</p> <p>20 Q. Any specific duties?</p> <p>21 A. -- in the factory. Again, I focused on 22 budgeting and cost reductions.</p>
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<p>1 Q. I see. So you worked for Ross from '69 2 until?</p> <p>3 A. '70.</p> <p>4 Q. What did you do for Ross?</p> <p>5 A. I was a Financial Analyst in the 6 Distribution Department.</p> <p>7 Q. What were your duties?</p> <p>8 A. I worked on determining the optimum 9 location for distribution points and negotiating 10 with carriers' freight rates.</p> <p>11 Q. So your focus was to save the company 12 money?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right, after that, then you went to 15 school at Wright State in Dayton to get your 16 master's --</p> <p>17 A. Yes.</p> <p>18 Q. -- In Corporate Finance?</p> <p>19 A. Yes.</p> <p>20 Q. And thereafter, is -- well, when did 21 you complete that program?</p> <p>22 A. In 1971.</p>	<p>1 Q. Okay. All right, thereafter, you went 2 to Abbott?</p> <p>3 A. (Witness nodding.)</p> <p>4 Q. Correct?</p> <p>5 A. Correct.</p> <p>6 Q. All right. Let's talk a little bit 7 about your career at Abbott. You have there from 8 -- in your CV Exhibit Miller 1160 a list of 9 positions you held from 1972 to 2003. You see 10 that?</p> <p>11 A. Correct.</p> <p>12 A. Yes.</p> <p>13 Q. Is that a full and complete list of all 14 the positions that you held at Abbott during this 15 period of time?</p> <p>16 A. Yes.</p> <p>17 Q. So when you started it -- at Abbott, 18 you started as a Cost Accounting Manager here in 19 Chicago?</p> <p>20 A. North Chicago.</p> <p>21 Q. North Chicago. I'm from the West. 22 Is that correct?</p>

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<p style="text-align: right;">Page 18</p> <p>1     A. North Chicago is about 50 miles north 2 of here.</p> <p>3     Q. Oh, okay. But that's where you 4 started?</p> <p>5     A. Yes, sir.</p> <p>6     Q. And when you retired, you retired as 7 Division Vice President - E-Commerce, correct?</p> <p>8     A. Correct.</p> <p>9     Q. All right, starting with your first 10 position with Abbott back in 1972, what is it 11 that you did as a Cost Accounting Manager?</p> <p>12    A. I was responsible for the monthly close 13 of the factory books.</p> <p>14    Q. What does that mean?</p> <p>15    A. Determining whether the factory 16 achieved its budget and whether -- basically 17 determine whether the factory made its budget for 18 the month or was over or under -- or positive or 19 negative versus its budget.</p> <p>20    Q. Again, it seems to be the focus is that 21 you were focused in on cost savings to stay 22 within budget?</p>	<p style="text-align: right;">Page 20</p> <p>1     A. I was responsible for all accounting 2 for that plant.</p> <p>3     Q. And when you say "all accounting," are 4 you talking about the physical plant or 5 additional activity?</p> <p>6     MS. TABACCHI: Object to the form.</p> <p>7 BY MR. SISNEROS:</p> <p>8     Q. All right, let me ask, when you say you 9 are responsible for all accounting for the plant, 10 what do you mean?</p> <p>11    A. A plant is composed of many 12 departments, okay? So I was responsible for the 13 accounting for the fixed assets of that plant as 14 well as the operational aspects of that plant.</p> <p>15    Q. What are the operational aspects?</p> <p>16    A. A plant makes many products, and we 17 were responsible for, again, determining whether 18 those products were produced to budget or over or 19 under budget.</p> <p>20    Q. Okay, I understand. And, additionally, 21 you're responsible for the -- what you call the 22 fixed assets?</p>
<p style="text-align: right;">Page 19</p> <p>1     A. Yes.</p> <p>2     MS. TABACCHI: Object to form.</p> <p>3 BY MR. SISNEROS:</p> <p>4     Q. All right, and you did that for about a 5 year?</p> <p>6     A. Six months.</p> <p>7     Q. And were you -- was that a supervisory 8 position?</p> <p>9     A. Yes.</p> <p>10    Q. And how many folks did you supervise?</p> <p>11    A. I do not remember.</p> <p>12    Q. Okay. Then from '73 to '76, you were 13 Plant Controller for Hospital Products; is that 14 correct?</p> <p>15    A. Same plant.</p> <p>16    Q. Is that Hospital Products Division?</p> <p>17    A. Yes, sir.</p> <p>18    Q. And you did that for -- from 19 -- how 19 long did you do that for?</p> <p>20    A. '73 through '76.</p> <p>21    Q. And what is it that you did as Plant 22 Controller?</p>	<p style="text-align: right;">Page 21</p> <p>1     A. Yes, sir.</p> <p>2     Q. The building?</p> <p>3     A. The building, the equipment.</p> <p>4     Q. Okay. And then from -- again, were you 5 -- was this a supervisory position?</p> <p>6     A. Yes.</p> <p>7     Q. And from there, you went to Assistant 8 Division Controller FP &amp; A. What does FP &amp; A 9 stand for?</p> <p>10    A. No, that was not the next job. The 11 next job was Assistant Division Controller - 12 Manufacturing.</p> <p>13    Q. Oh, yeah, you're right. Again, that's 14 with Hospital Products Division?</p> <p>15    A. Correct.</p> <p>16    Q. And that was from 1976 to 1981?</p> <p>17    A. Correct.</p> <p>18    Q. And what were your duties there?</p> <p>19    A. I had multiple Plant Controllers that 20 worked for me.</p> <p>21    Q. What areas?</p> <p>22    A. Manufacturing.</p>

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<p>1 Q. How is that different from your duties  2 as the North Chicago Plant Controller with  3 respect to accounting for the products that are  4 being manufactured?</p> <p>5 A. I just moved up a layer.</p> <p>6 Q. You just moved up the supervisor layer?</p> <p>7 A. (Witness nodding.)</p> <p>8 Q. And so how many folks did you supervise  9 as Assistant Division Controller?</p> <p>10 A. I do not remember.</p> <p>11 Q. All right. But that was a promotion  12 from Plant Controller?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right. And then from there, we go  15 to Assistant Division Controller, FP &amp; A -  16 Hospital Products; is that right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And, again, that's still in the  19 Hospital Products Division?</p> <p>20 A. Yes, sir.</p> <p>21 Q. What's FP &amp; A?</p> <p>22 A. Financial planning and analysis.</p>	<p>1 THE WITNESS: I'm not --</p> <p>2 MR. SOFFER: If you can answer, you  3 may.</p> <p>4 THE WITNESS: I'm not qualified to  5 answer whether they were generic or not.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Okay. With regard to your duties as  8 Assistant Division Controller, FP &amp; A in the  9 Hospital Products Division, I believe you  10 testified that one -- one of the aspects of your  11 work was to see if product was being manufactured  12 according to budget?</p> <p>13 A. (Witness nodding.)</p> <p>14 Q. Yes?</p> <p>15 A. In the manufacturing jobs, yes.</p> <p>16 Q. How -- did you develop the budgets?</p> <p>17 A. Early in my career.</p> <p>18 Q. But not at that point?</p> <p>19 A. In that point, I would be in a  20 management review of budgets.</p> <p>21 Q. How would a manufacturing budget for a  22 product be developed?</p>
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<p>1 Q. And what is that?</p> <p>2 A. That means you work with the -- a group  3 to do budgets again.</p> <p>4 Q. In what areas would you -- would -- in  5 what areas would you work on budgeting?</p> <p>6 A. Staff areas. Sales marketing, R &amp; D,  7 administration.</p> <p>8 Q. The -- again, this was in the Hospital  9 Products Division?</p> <p>10 A. Yes, sir.</p> <p>11 Q. In terms of the product that was  12 manufactured by the Hospital Products Division,  13 that was for the most part generic products?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. Let me ask this. The pharmaceutical  17 products that were developed by the Hospital  18 Products Division, were they generic products?</p> <p>19 A. I don't know.</p> <p>20 Q. So you were unfamiliar as to the type  21 of product that they were developing?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p>1 MS. TABACCHI: Object to the form.</p> <p>2 MR. SOFFER: Again, if you're able to  3 answer, you may do so.</p> <p>4 THE WITNESS: You -- we're going to  5 have a discussion on cost accounting.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Well, okay, let me ask -- let me ask  8 you this. In your experience at least within the  9 Hospital Products Division --</p> <p>10 A. Um-hum.</p> <p>11 Q. -- the line of positions that you held,  12 you were very involved in cost benefit analysis?</p> <p>13 A. No.</p> <p>14 Q. You were very involved in -- in cost of  15 product or the physical plant in relation to what  16 was budgeted for that?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: Yes, sir.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. So you were -- you were primarily  21 responsible for -- for containing costs?</p> <p>22 MS. TABACCHI: Object to the form.</p>

7 (Pages 22 to 25)

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<p>1       MR. SOFFER: You may answer if you can.  2       THE WITNESS: I was primarily  3 responsible to assist line management in the  4 identification of causes of cost variances versus  5 budget.  6 BY MR. SISNEROS:  7       Q. Okay. All right, then from Hospital --  8 then from FP &amp; A at the Hospital Products  9 Division, you became Division Controller For  10 Corporate Materials Management in 1982; is that  11 right?  12      A. Yes, sir.  13      Q. Okay, what is that?  14      A. Corporate Materials Management was a  15 service division that distributed -- let me back  16 up -- operated distribution centers and trucks to  17 move product from plants to distribution centers  18 and from distribution centers to major customers.  19      Q. And what was your responsibility?  20      A. I was again responsible for the  21 accuracy and the integrity of the books for that  22 division.</p>	<p>1 the context of Medicare and Medicaid?  2      A. There were DRGs.  3      Q. DRG stands for?  4      A. Diagnosis related codes -- diagnosis  5 related groups.  6      Q. Well, what products or services were  7 you setting Medicaid/Medicare prices for?  8        MS. TABACCHI: Object to the form.  9        MR. SOFFER: If you're able to answer,  10 you may.  11        THE WITNESS: We were in the total  12 parental nutrition business, the total enteral  13 nutrition business, and the renal care business.  14 BY MR. SISNEROS:  15      Q. These are products and services that  16 involve infusion therapies; is that right?  17        MS. TABACCHI: Object to the form.  18        THE WITNESS: Some of these project --  19 well --  20        MR. SOFFER: You can answer.  21        THE WITNESS: Some of these products  22 are injected in human beings, and some of them</p>
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<p>1       Q. Okay. And then from there, you got  2 promoted to Division Controller - Home Care in  3 '83, correct?  4      A. Yes, sir.  5      Q. Were your duties functionally the same  6 as they had been at the Corporate Materials  7 Management?  8        MS. TABACCHI: Object to the form.  9        MR. SOFFER: You may answer if you can.  10 BY MR. SISNEROS:  11      Q. All right, let me just ask it this way.  12 What were your duties as Division Controller At  13 Home Care?  14      A. I was responsible for, again,  15 maintaining the integrity and accuracy of the  16 books for that division and for establishing the  17 pricing for our products when we billed Medicare,  18 Medicaid and private insurance companies.  19      Q. How did you do that?  20        MS. TABACCHI: Object to the form.  21 BY MR. SISNEROS:  22      Q. How -- how would you price products in</p>	<p>1 are fed orally to human beings.  2 BY MR. SISNEROS:  3      Q. When you would -- what did you call  4 that, DRGs? I'm sorry, DRGs?  5      A. Right.  6      Q. When you said pricing -- well, can you  7 explain to me how you would set a pricing through  8 the DRGs?  9        MS. TABACCHI: Object to the form.  10        MR. SOFFER: You can answer if you're  11 able.  12        THE WITNESS: Abbott was a late entrant  13 in this market, and there were lots of  14 competitive pricing available.  15        We were setting the product for the  16 individual components that went into a therapy.  17 Like if you were on home enteral nutrition, you  18 would take a product like Ensure, you would need  19 a tube and other ancillary supplies. We set the  20 prices for those individual supplies that went  21 within a diagnosis group.  22 BY MR. SISNEROS:</p>

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<p>1 Q. I see. You -- you weren't responsible  2 for -- for a pharmaceutical product. You were  3 responsible for equipment?</p> <p>4 A. We sold no pharmaceutical products.</p> <p>5 Q. You sold equipment?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. All right, then from there, you  8 went to, again, Assistant Corporate Controller -  9 FP &amp; A?</p> <p>10 A. Right, correct.</p> <p>11 Q. And your duties there?</p> <p>12 A. Abbott has a budget cycle three times a  13 year, and all the groups submit budgets. My job  14 was to help line management review, analyze and  15 make recommendations.</p> <p>16 Q. What specific areas of budgeting did  17 you review --</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. (Continuing) -- as Assistant Corporate  21 Controller of FP &amp; A?</p> <p>22 MR. HOFFMAN: You can answer.</p>	<p>1 A. I would have worked with the division  2 controller.</p> <p>3 Q. Do you recall who that would have been?</p> <p>4 A. No.</p> <p>5 Q. Can you give me an example of what you  6 would have been reviewing with a representative  7 from the Hospital Products Division?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: It could be as simple as  10 the wage -- the annual merit wage increase they  11 built in, the annual wage progression they built  12 in to -- could.</p> <p>13 BY MR. SISNEROS:</p> <p>14 Q. Well, let me ask you this specific  15 question. Would you -- would your duties have  16 required for a review, for example, of product  17 price increases?</p> <p>18 A. No.</p> <p>19 Q. Was there anyone in the controller's  20 office who would have been responsible for that  21 type of review?</p> <p>22 MS. TABACCHI: Object to form.</p>
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<p>1 THE WITNESS: Every division and every  2 corporate staff function submitted a budget, a  3 budget -- yeah, submitted a budget.</p> <p>4 BY MR. SISNEROS:</p> <p>5 Q. So you reviewed all aspects of the  6 business for every division?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 MR. SOFFER: You can answer if you can.</p> <p>9 THE WITNESS: I assisted line  10 management in that task.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. Those that you supervised?</p> <p>13 A. No, accounting does not supervise  14 operating units.</p> <p>15 Q. Well, this particular position then,  16 your duties required that you worked with  17 individuals from the different divisions?</p> <p>18 A. Yes, and corporate management.</p> <p>19 Q. And corporate management.</p> <p>20 A. (Witness nodding.)</p> <p>21 Q. Did you have a contact in Hospital  22 Products Division?</p>	<p>1 THE WITNESS: At the corporate level?</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. Yes.</p> <p>4 A. No.</p> <p>5 Q. At the divisional level?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 MR. SOFFER: You can answer if you  8 know.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. And at the divisional level, who had  12 responsibility for reviewing price increases?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: At that point in time, I  15 cannot tell you. I -- I do not know.</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. And, actually, I'm not looking for an  18 individual's name. I'm looking for a position.</p> <p>19 Who -- what position in -- within a  20 division would be responsible for reviewing that  21 division's increase -- a price increase of  22 product?</p>

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<p>1 MS. TABACCHI: Object to the form.  2 MR. SOFFER: You can answer if you know  3 the answer to the question.  4 THE WITNESS: You -- you can -- Abbott  5 was six companies -- is six companies. Well, I  6 don't know what it is today. When I was there,  7 it was six companies.  8 You cannot generically say this  9 individual in this division is responsible for  10 that. They're all organized differently.  11 BY MR. SISNEROS:  12 Q. So the responsibility for that duty  13 within that division would -- would have been  14 identified within the division?  15 A. Yes, sir.  16 Q. Thereafter, you went to Area Finance  17 Director - Europe International?  18 A. Yes, sir.  19 Q. Were you actually in Europe?  20 A. No.  21 Q. Okay, what were your duties?  22 A. My first duty was to close the Paris</p>	<p>1 BY MR. SISNEROS:  2 Q. Consulting?  3 A. Yes.  4 Q. What -- do you have your own company?  5 A. No.  6 Q. What -- who do you consult for?  7 A. From a Fortune 500 to a baby company.  8 Q. And pharmaceutical companies?  9 A. No, sir.  10 Q. All right. After a stint as Division  11 Vice President - Finance International, you went  12 -- became Divisional Vice President - Corporate  13 Planning?  14 A. Yes, sir.  15 Q. What were your duties there?  16 A. The primary duties were product  17 acquisition either through purchase or licensing.  18 Q. Okay. What -- what -- give me some  19 examples of what you did --  20 A. Um-hum.  21 Q. -- as Corporate Planning product  22 acquisition.</p>
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<p>1 office and bring it back.  2 Q. Was that a cost saving?  3 A. A million dollars.  4 Q. What else did you do for them?  5 MS. TABACCHI: Object to the form.  6 BY MR. SISNEROS:  7 Q. Well, what else did you do as Division  8 Vice President of Finance International?  9 A. I was responsible for the accuracy and  10 integrity of the books at the -- financial books  11 at the division level and each of the hundred  12 affiliates.  13 Q. And I see that during this period of  14 time you also became a CPA?  15 A. Yes, sir. Well, I was a CPA before I  16 went to International.  17 Q. I see. That's correct. Are you  18 currently a CPA?  19 A. I am a retired CPA.  20 Q. Okay, are you -- are you doing any kind  21 of work presently?  22 MS. TABACCHI: Object to the form.</p>	<p>1 MS. TABACCHI: Object to the form.  2 MR. SOFFER: You may answer if you can.  3 THE WITNESS: Okay. I had -- let's  4 back up.  5 Our job was to analyze business areas  6 we were not in to see if they would fit with the  7 overall Abbott portfolio and to find products at  8 small companies generally that would be licensed  9 that would complement Abbott's existing strengths  10 in its product portfolio.  11 BY MR. SISNEROS:  12 Q. You were looking to license products  13 developed by others?  14 A. Yes, sir.  15 Q. Would that include looking for products  16 that had been patented by other companies?  17 A. Yes.  18 Q. Would it include products that had been  19 patented by other institutions, say,  20 universities?  21 A. Yes.  22 Q. This is something I guess you did for a</p>

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<p>1 couple of years?</p> <p>2 A. Yes.</p> <p>3 Q. In your -- in this position, about how</p> <p>4 many products did you license from other</p> <p>5 institutions?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: Other institutions?</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. Universities, other companies.</p> <p>10 A. Oh.</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. Let me -- let me rephrase the question.</p> <p>14 You've testified that as part of your</p> <p>15 duties, you were looking for a product that may</p> <p>16 have been patented by another company or other</p> <p>17 institutions like a university, correct?</p> <p>18 A. Um-hum.</p> <p>19 Q. Yes?</p> <p>20 A. Yes.</p> <p>21 Q. And my question is, to your best of</p> <p>22 your recollections, how many products did you</p>	<p>Page 40</p> <p>1 - as Division Vice President - Corporate Planning</p> <p>2 get involved in the licensing of a product that</p> <p>3 had not been manufactured by Abbott?</p> <p>4 A. Yes.</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Could you give me some examples?</p> <p>8 A. Yeah.</p> <p>9 Q. Please for the record give me some</p> <p>10 examples.</p> <p>11 A. There was a product called Synagis</p> <p>12 marketed by Ross Division, which was -- which is,</p> <p>13 I assume -- I don't know about -- it's -- the</p> <p>14 manufacturer's Medimmune.</p> <p>15 Q. Okay, there were others?</p> <p>16 A. Oh, yeah.</p> <p>17 Q. All right. And so my question is with</p> <p>18 respect to your duties at this time as Division</p> <p>19 Vice President of Corporate Planning, you were</p> <p>20 concerned with budgets for acquiring product from</p> <p>21 other companies or institutions and licensing</p> <p>22 them through Abbott; is that accurate?</p>
<p>Page 39</p> <p>1 license for Abbott --</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 BY MR. SISNEROS:</p> <p>4 Q. (Continuing) -- from other</p> <p>5 institutions?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 MR. SOFFER: If you're able, you may</p> <p>8 answer.</p> <p>9 THE WITNESS: Well, let me -- let me</p> <p>10 rephrase, okay?</p> <p>11 We would identify a product either with</p> <p>12 or without a division. Corporate does not market</p> <p>13 -- I guess -- corporate really doesn't market</p> <p>14 products. Divisions sell products at Abbott. So</p> <p>15 -- can I give a real example?</p> <p>16 MR. SOFFER: Why don't we have the</p> <p>17 question asked again.</p> <p>18 BY MR. SISNEROS:</p> <p>19 Q. Well, look, let me ask this.</p> <p>20 MR. SOFFER: Go ahead.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Did Abbott -- did you at this time at -</p>	<p>Page 41</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I would say that we were</p> <p>3 concerned with licensing products, not budgets.</p> <p>4 Our job was to identify and to assist the</p> <p>5 divisions in licensing or acquiring products. We</p> <p>6 did not have the budgets.</p> <p>7 BY MR. SISNEROS:</p> <p>8 Q. Was cost a consideration in that</p> <p>9 process of acquiring those products that you</p> <p>10 would license?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: Every -- every product</p> <p>13 had a P &amp; L prepared for it.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. What's --</p> <p>16 A. A profit and loss statement when you</p> <p>17 had -- when you went to license it.</p> <p>18 Q. All right, thereafter, you went to --</p> <p>19 by the way, when you were Division Vice President</p> <p>20 of Corporate Planning, who was your immediate</p> <p>21 supervisor?</p> <p>22 A. During the period of time I was there,</p>

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<p>1 I had two supervisors.</p> <p>2 Q. And who were they?</p> <p>3 A. Dick Moorehead -- Richard Moorehead.</p> <p>4 Q. Who else?</p> <p>5 A. Steve Weiger.</p> <p>6 Q. What was Moorehead's position?</p> <p>7 A. He --</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: You can answer.</p> <p>10 THE WITNESS: He was Vice President -</p> <p>11 Corporate Strategic Planning. That title may not</p> <p>12 be a hundred percent accurate.</p> <p>13 BY MR. SISNEROS:</p> <p>14 Q. Okay, how about Mr. Weiger?</p> <p>15 A. Same title basically.</p> <p>16 Q. Mr. Weiger had the same title?</p> <p>17 A. (Witness nodding.) Mr. Moorehead</p> <p>18 retired.</p> <p>19 Q. Okay, and who was Weiger's supervisor?</p> <p>20 A. Gary Coughlin.</p> <p>21 Q. And what was Coughlin's --</p> <p>22 A. Chief Financial Officer.</p>	<p>1 Q. When did you develop that program?</p> <p>2 A. We bought it. Well, you've heard of</p> <p>3 SAP?</p> <p>4 Q. No, I haven't.</p> <p>5 A. Okay.</p> <p>6 Q. What is SAP?</p> <p>7 A. SAP is a German software company,</p> <p>8 Systems Application and Programming. It's a big</p> <p>9 ER -- what's called enterprise related -- ERP</p> <p>10 software.</p> <p>11 Q. When did you buy this for Abbott?</p> <p>12 A. In 1999, 2000, somewhere in that time</p> <p>13 frame.</p> <p>14 Q. When was it implemented for customers</p> <p>15 to use this service?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 BY MR. SISNEROS:</p> <p>18 Q. When was it implemented so customers</p> <p>19 could use this software?</p> <p>20 A. We went -- there was -- it was</p> <p>21 implemented for the domestic divisions. We</p> <p>22 started with the Diagnostics Division first.</p>
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<p>1 Q. Who was Coughlin's boss?</p> <p>2 A. CEO.</p> <p>3 Q. '96 through '98, who would have been</p> <p>4 the CEO?</p> <p>5 A. There was a change in there. I'm not</p> <p>6 positive.</p> <p>7 Q. Well, who were the two?</p> <p>8 A. Dwayne Burnham.</p> <p>9 Q. And the other one?</p> <p>10 A. Miles White.</p> <p>11 Q. All right, thereafter, you went to</p> <p>12 Division Vice President of E-Commerce from 1998</p> <p>13 until you -- your retirement in 2003, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And what were your duties there?</p> <p>16 A. The primary duty was I installed a new</p> <p>17 order entry system for Abbott in the U.S.</p> <p>18 Q. Order entry system, what is that?</p> <p>19 A. It's what -- it's the computer software</p> <p>20 that accepts customers' inventory -- customers'</p> <p>21 orders, signs inventory, and then fulfills that</p> <p>22 request.</p>	<p>1 Q. When?</p> <p>2 A. It would have been two thousand and --</p> <p>3 2001.</p> <p>4 Q. To the best of your recollection, when</p> <p>5 did the Hospital Products Division get onboard</p> <p>6 with this program?</p> <p>7 A. 2002.</p> <p>8 Q. Is the program one that is accessible</p> <p>9 to your -- to Abbott customers?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: Define "accessible."</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. If a customer wants to order product,</p> <p>14 can they do it online through this program?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 MR. SOFFER: You may answer, if you</p> <p>17 can.</p> <p>18 THE WITNESS: Hospital Products'</p> <p>19 products cannot.</p> <p>20 BY MR. SISNEROS:</p> <p>21 Q. Who -- what customers -- I understood</p> <p>22 that you said that this was something that was</p>

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<p style="text-align: right;">Page 46</p> <p>1 implemented so that customers could order 2 product. How do they do that? 3 A. The Diagnostics -- well, you can do it 4 via EDI, electronic data interchange, you can do 5 it via calling or, in some divisions, you can do 6 it via the Internet. 7 Q. But -- okay, but Hospital Products 8 Division did not -- never had access through the 9 Internet? 10 A. No. 11 Q. Okay. So I -- excuse me, let me 12 rephrase the question. 13 Customers of the Hospital Products 14 Division could not order their product through 15 this program? 16 A. They had to call in their orders or 17 they had to place them via EDI. 18 Q. I see. Okay. All right, I want to 19 change focus now from -- from your employment 20 history a bit, and I wanted to ask you that -- or 21 mark as Exhibit Miller 1161 -- 22 (Exhibit Miller 1161 was marked</p>	<p style="text-align: right;">Page 48</p> <p>1 MS. TABACCHI: Object to the form. 2 BY MR. SISNEROS: 3 Q. (Continuing) -- or this lawsuit? Were 4 you aware of this lawsuit? 5 MS. TABACCHI: Object to the form. 6 MR. SOFFER: Objection. 7 What period of time was he aware? 8 BY MR. SISNEROS: 9 Q. Well, before this deposition, were you 10 -- before you were noticed for this deposition, 11 were you aware that Abbott was being sued by 12 various government agencies? 13 MS. TABACCHI: Object to the form. 14 MR. SOFFER: You may answer if you can. 15 THE WITNESS: Until I got a call from 16 the Abbott Legal Department, no. 17 BY MR. SISNEROS: 18 Q. When did you get a call from the Abbott 19 Legal Department? 20 A. The last 60 days sometime. 21 Q. Okay, in the last couple months? 22 A. Yeah.</p>
<p style="text-align: right;">Page 47</p> <p>1 for ID) 2 BY MR. SISNEROS: 3 Q. All right, I've had marked and 4 identified as Exhibit Miller 1161 to your 5 deposition a copy of a subpoena duces tecum that 6 was attached to your notice of deposition. 7 Have you seen that document before? 8 A. Yes, my lawyers provided it to me. 9 Q. Did you provide any documents to your 10 attorneys pursuant to that subpoena? 11 A. Only the resume. 12 Q. Okay. Did you make a search for 13 documents pursuant to that subpoena? 14 A. Yes, sir. 15 Q. And the only document you found was 16 your resume? 17 A. Yes, sir. 18 Q. Okay. Now, other than your attorneys, 19 did you speak to anyone about your deposition 20 here today? 21 A. No. 22 Q. Were you aware of this litigation --</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. All right, okay. 2 All right, I want to now again shift 3 over and I want to turn your attention to the 4 period of time when you were Division Vice 5 President of Corporate Planning. Have you heard 6 of the Medicare Working Group? 7 A. Yes. 8 Q. What is it? 9 A. The Medicare Working Group was a -- 10 it's called a working group of personnel from the 11 divisions and interested corporate functions on 12 product reimbursement. 13 Q. How was this group created? 14 A. I was asked by Mr. Moorehead to call a 15 meeting. 16 Q. And Mr. Moorehead was your direct 17 supervisor -- 18 A. Yes, sir. 19 Q. -- Vice President of Corporate 20 Strategic Planning? 21 A. (Witness nodding.) 22 Q. Yes?</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay. And what were Mr. Moorehead's</p> <p>3 instructions to you?</p> <p>4 A. I do not recall specifically, but it</p> <p>5 was generally to call a meeting of these people</p> <p>6 who were responsible for I'm going to call it</p> <p>7 insurance coverage in the divisions and certain</p> <p>8 corporate functions that were interested.</p> <p>9 MR. SOFFER: Why don't we have a break</p> <p>10 now?</p> <p>11 MR. SISNEROS: Okay.</p> <p>12 THE WITNESS: Okay.</p> <p>13 THE VIDEOGRAPHER: We are off the</p> <p>14 record at 9:56 a.m.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: We are back on the</p> <p>17 record at 10:08 a.m.</p> <p>18 BY MR. SISNEROS:</p> <p>19 Q. Mr. Miller, I'm going to have the court</p> <p>20 reporter read off a couple of questions and</p> <p>21 answers just before we took the first break</p> <p>22 because I want to follow up with some questions</p>	<p>1 why you were asked to create this group?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: No. I'd be guessing.</p> <p>4 MR. SISNEROS: Don't guess.</p> <p>5 (Exhibit Miller 1162 was marked</p> <p>6 for ID)</p> <p>7 BY MR. SISNEROS:</p> <p>8 Q. I'm handing you what I've marked and</p> <p>9 identified as Exhibit Miller 1162 to your</p> <p>10 deposition, pages 1 and 2, and these are two</p> <p>11 lists.</p> <p>12 Are -- if you could take a moment and</p> <p>13 review both lists?</p> <p>14 A. (Witness reviewing document.)</p> <p>15 Okay.</p> <p>16 Q. Have you had a chance to review both</p> <p>17 lists, Mr. Miller?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right, the first page of Exhibit</p> <p>20 Miller 1162 is entitled, "Abbott's Medicare</p> <p>21 Working Group Key Participants." Do you see</p> <p>22 that?</p>
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<p>1 to your response.</p> <p>2 (Record read as follows:</p> <p>3 Q. Have you heard of the Medicare Working</p> <p>4 Group?</p> <p>5 A. Yes.</p> <p>6 Q. What is it?</p> <p>7 A. The Medicare Working Group was a --</p> <p>8 it's called a working group of personnel from the</p> <p>9 divisions and interested corporate functions on</p> <p>10 product reimbursement.")</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. Mr. Miller, what did you mean by the</p> <p>13 words "interested corporate functions on product</p> <p>14 reimbursement"?</p> <p>15 A. The corporate groups that I remember</p> <p>16 attending via person or in phone was Public</p> <p>17 Affairs and the Washington office and, obviously,</p> <p>18 my department.</p> <p>19 Q. If you know, is there a reason why Mr.</p> <p>20 Moorehead asked you to create this group?</p> <p>21 A. I do not remember a specific reason.</p> <p>22 Q. Do you have a general recollection of</p>	<p>1 A. Yes, sir.</p> <p>2 Q. And then the second list is entitled,</p> <p>3 "Abbott's Medicare Working Group Distribution</p> <p>4 List;" is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And it appears to me that in both lists</p> <p>7 it's the same group of individuals. Is that</p> <p>8 correct?</p> <p>9 A. There's sixteen names on both pages.</p> <p>10 Q. The difference between page 1 and page</p> <p>11 2 is that it identifies each of the individuals -</p> <p>12 - or strike that.</p> <p>13 Page 1 of the exhibit identifies the</p> <p>14 division from which those individuals come from;</p> <p>15 is that correct?</p> <p>16 A. Division and corporate function.</p> <p>17 Q. That's correct. Now, who was</p> <p>18 responsible for the individuals that composed the</p> <p>19 Medicare working group?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. All right, let me try it a different</p>

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<p style="text-align: right;">Page 54</p> <p>1 way. Who picked the members of the Medicare 2 Working Group?</p> <p>3 A. The initial participants were suggested 4 by Mr. Moorehead.</p> <p>5 Q. And the individuals that are listed in 6 Exhibit Miller 1162, are those the individuals 7 that were suggested by Mr. Moorehead?</p> <p>8 A. I do not remember.</p> <p>9 Q. Are some of the individuals that are to 10 be found on the list of Exhibit Miller 1162 some 11 of the individuals that Mr. Moorehead suggested?</p> <p>12 A. Yes.</p> <p>13 Q. What individuals are those?</p> <p>14 A. I cannot answer with total accuracy.</p> <p>15 Q. To the best of your recollection.</p> <p>16 A. I mean there are people -- I don't 17 know. I mean ADD, Paul Landauer had -- well, I'm 18 not -- I'm not sure who was on the original list. 19 I mean that's ten years ago, guys.</p> <p>20 Q. From the best of your recollection, 21 were most of the individuals that Moorehead 22 suggested to you in fact the members of the</p>	<p style="text-align: right;">Page 56</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: Knowledgeable.</p> <p>3 BY MR. SISNEROS:</p> <p>4 Q. Knowledgeable on reimbursement issues 5 in their division?</p> <p>6 A. Yes.</p> <p>7 Q. Since your name is on this list, then 8 you are an individual that is knowledgeable on 9 reimbursement issues?</p> <p>10 A. No, sir.</p> <p>11 Q. Why are you here?</p> <p>12 A. I was assigned a coordination role.</p> <p>13 Q. And what -- in coordination role, what 14 were your responsibilities?</p> <p>15 A. To get the individuals together for a 16 one-hour meeting once a month.</p> <p>17 Q. To discuss reimbursement?</p> <p>18 A. To discuss --</p> <p>19 MS. TABACCHI: Object to the form. 20 THE WITNESS: To discuss coverage 21 issues for their products. I'm going to 22 interchange "reimbursement" and "coverage" as the</p>
<p style="text-align: right;">Page 55</p> <p>1 Medicare Working Group?</p> <p>2 A. I remember there were people that 3 showed up for the initial meetings that said, 4 "Why am I here?"</p> <p>5 Q. When was that initial meeting?</p> <p>6 A. It would have to be in the fall of '96.</p> <p>7 Q. August, September, October, November of 8 '96?</p> <p>9 A. Somewhere after I was there.</p> <p>10 MS. TABACCHI: Object to form.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. And when these individuals asked, "Why 13 am I here," what did you tell them?</p> <p>14 A. "It's a working group to share 15 information on the reimbursement products. If 16 you're responsible for that, you belong here. If 17 you're not responsible for that, give me a name."</p> <p>18 Q. So at least in the -- in identifying 19 the members that were to be on the Medicare 20 Working Group, they were to be individuals that 21 were responsible for reimbursement issues in 22 their division?</p>	<p style="text-align: right;">Page 57</p> <p>1 same word.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. Okay. And "coverage," you mean 4 coverage by third-party payers?</p> <p>5 A. Any third-party payer.</p> <p>6 Q. Private health insurance?</p> <p>7 A. Hospitals, yeah, right.</p> <p>8 Q. Medicare/Medicaid?</p> <p>9 A. Any third-party payer.</p> <p>10 Q. Including Medicare and Medicaid?</p> <p>11 A. Yes, sir.</p> <p>12 Q. All right. Was Rich Rieger someone who 13 was knowledgeable in reimbursement?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I do not believe so.</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. How about Cathy Babington?</p> <p>18 A. I do not believe so.</p> <p>19 Q. Hank Doyle?</p> <p>20 A. I do not believe so.</p> <p>21 Q. Don Buell?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 58</p> <p>1        THE WITNESS: I'm not qualified to 2 answer on these individuals, what their specific 3 knowledge levels are.</p> <p>4 BY MR. SISNEROS:</p> <p>5        Q. Based on your experience in working 6 with -- by the way, how long did you work with 7 these folks on the Medicare Working Group?</p> <p>8        A. I believe --</p> <p>9        MS. TABACCHI: Object to the form.</p> <p>10 BY MR. SISNEROS:</p> <p>11       Q. All right, let me ask it this way. How 12 long did the Medicare Working Group exist?</p> <p>13       A. I believe it existed through the end of 14 '97.</p> <p>15       Q. So its existence basically was for one 16 year?</p> <p>17       A. Yeah.</p> <p>18       Q. What changed that became defunct?</p> <p>19       MS. TABACCHI: Object to the form.</p> <p>20 BY MR. SISNEROS:</p> <p>21       Q. Well, let me try another way. What 22 change -- what event led to the group disbanding?</p>	<p style="text-align: right;">Page 60</p> <p>1        MS. TABACCHI: Object to the form.</p> <p>2        THE WITNESS: I'm an operational 3 efficiency expert.</p> <p>4 BY MR. SISNEROS:</p> <p>5        Q. And what's that?</p> <p>6        A. I did a lot of -- in my job, I look at 7 how you make organizations more efficient, okay?</p> <p>8 That's part of the budgeting management --</p> <p>9 management of the budgeting process at Abbott.</p> <p>10       Q. When you say "make things more 11 efficient," are you talking about financial-wise?</p> <p>12       MS. TABACCHI: Object to the form.</p> <p>13       THE WITNESS: Organization.</p> <p>14 BY MR. SISNEROS:</p> <p>15       Q. Organizational-wise?</p> <p>16       A. (Witness nodding.)</p> <p>17       Q. So this Medicare Working Group -- or 18 are you saying that this Medicare Working Group 19 was an experiment at efficiency?</p> <p>20       MS. TABACCHI: Object to the form.</p> <p>21       THE WITNESS: I don't know what was in 22 management's mind when they assigned the task.</p>
<p style="text-align: right;">Page 59</p> <p>1        A. It was not in one of the top five 2 priorities for my organization. So I assume it 3 fell by the way side.</p> <p>4        Q. Well, does that mean when this group 5 was created, it was one of the top five 6 priorities for your -- for your division?</p> <p>7        MS. TABACCHI: Object to the form.</p> <p>8        THE WITNESS: I cannot answer that. It 9 was an assignment from my boss. The --</p> <p>10 BY MR. SISNEROS:</p> <p>11       Q. So in the course -- in the course of 12 your one-year participation --</p> <p>13       A. Um-hum.</p> <p>14       Q. -- with the Medicare Working Group, was 15 it ever clear to you why this group was created?</p> <p>16       MS. TABACCHI: Object to the form.</p> <p>17       THE WITNESS: I'd be guessing.</p> <p>18 BY MR. SISNEROS:</p> <p>19       Q. I'm not asking you to guess. Based --</p> <p>20 I'm asking you, based on your 30 years of 21 experience at Abbott, you know, did you ever have 22 an understanding why this group was created?</p>	<p style="text-align: right;">Page 61</p> <p>1        BY MR. SISNEROS:</p> <p>2        Q. What was in your mind? What did you 3 think?</p> <p>4        A. I went out and looked at the processes 5 for getting products reimbursed in the various 6 divisions or getting insurance coverage for the 7 various products in the divisions.</p> <p>8        Q. How did you do that?</p> <p>9        A. By asking questions like you're doing.</p> <p>10       Q. Okay. What questions did you ask and 11 what did you learn?</p> <p>12       MS. TABACCHI: Object to the form.</p> <p>13       THE WITNESS: I learned that products 14 of the divisions have very little similarities in 15 how they are approved or reimbursed.</p> <p>16 BY MR. SISNEROS:</p> <p>17       Q. With respect to the Hospital Products 18 Division, what did you learn about how their 19 products were reimbursed?</p> <p>20       MS. TABACCHI: Object to the form.</p> <p>21       THE WITNESS: In that time frame, the 22 majority, vast majority of their products were</p>

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<p>1 sold directly to hospitals on contract.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. With regard to their product that was</p> <p>4 not sold to hospital, what did you learn about</p> <p>5 reimbursement of those products?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: I don't -- nothing that I</p> <p>8 recall.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. Okay, all right. Prior to the creation</p> <p>11 of the Medicare Working Group, was there some</p> <p>12 mechanism at Abbott to deal with the type of</p> <p>13 issues that you dealt with in the Medicare</p> <p>14 Working Group?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: I -- I'm not qualified to</p> <p>17 answer. I wasn't at the corporate level.</p> <p>18 BY MR. SISNEROS:</p> <p>19 Q. You were at the corporate level when</p> <p>20 this was formed, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. How long had you been at the corporate</p>	<p>1 proposed changes during those years.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. Proposed changes to the Medicare</p> <p>4 program?</p> <p>5 A. To state programs, Medicare programs.</p> <p>6 Q. Okay. This was -- I'm sorry, let me --</p> <p>7 let me look at this.</p> <p>8 This was around the '96, '98 time</p> <p>9 period? Well, '96, '97 you said earlier,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. That was the Clinton presidency.</p> <p>13 Clinton was President at the time, correct?</p> <p>14 A. He served two terms, yes.</p> <p>15 Q. He had two terms. And it was around</p> <p>16 that time, I believe, that -- that Hilary Clinton</p> <p>17 was proposing sweeping changes to the healthcare</p> <p>18 program; is that correct?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: Your memory's better than</p> <p>21 mine.</p> <p>22 BY MR. SISNEROS:</p>
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<p>1 level when this was formed?</p> <p>2 A. 30 days, 60 days.</p> <p>3 Q. This was one of your first assignments?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Did you ever do any other -- did you</p> <p>6 have other types of assignments similar to this</p> <p>7 where you were part of a working group, perhaps</p> <p>8 other issues?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: They would have been more</p> <p>11 business or financial related. This is about as</p> <p>12 far afield as I ever worked.</p> <p>13 BY MR. SISNEROS:</p> <p>14 Q. Okay. Now, just so I'm clear, with</p> <p>15 respect to the reimbursement issues, what we --</p> <p>16 what your discussion in this group was was about</p> <p>17 the reimbursement to the third-party payers?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Why were you looking at issues</p> <p>20 regarding reimbursement to third-party payers?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: There were a lot of</p>	<p>1 Q. Well, there was some Medicare proposals</p> <p>2 that was put forward by the Clinton</p> <p>3 administration? Do you remember that?</p> <p>4 A. Yes.</p> <p>5 Q. Was -- were at least -- were some of</p> <p>6 those proposals on the table at the time this</p> <p>7 Medicare Working Group was formed?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: I do not remember.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. You do not recall?</p> <p>12 A. (Witness shaking head.)</p> <p>13 Q. Do you recall any discussion within the</p> <p>14 Medicare Working Group regarding proposals at --</p> <p>15 on the table and before state legislatures and</p> <p>16 the federal legislature regarding changes to</p> <p>17 Medicaid or Medicare?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: I do not recall the</p> <p>20 specifics of discussions ten years ago.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Okay, all right. You were the person</p>

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<p style="text-align: right;">Page 66</p> <p>1 primarily responsible to make -- for keeping the 2 Working Group moving along, working? 3       A. It was called the information sharing 4 of the Working Group. 5       Q. The what? 6       A. Information sharing. 7       Q. Okay, you were responsible for 8 information sharing? 9       A. (Witness nodding.) 10      Q. What kind of information would you be 11 sharing? 12      A. A person could come in and say, Senator 13 so and so has a proposal to do X, Y and Z in 14 Congress. The Washington office could say that. 15      Q. And you'd be the contact person? 16      A. No, we'd all be in a room. 17      Q. Oh, I see. 18      A. See, the Washington office would be on 19 the phone, and they might say, you know, Senator 20 -- Senator Clinton. We're going to make Hilary a 21 senator back then. Senator Clinton has a 22 proposal to do this, to pricing or to</p>	<p style="text-align: right;">Page 68</p> <p>1       Q. But -- but in terms of what had been 2 identified as the key participants of the 3 Medicare Working Group, those three were part of 4 it? 5       A. The Washington office was a key 6 participant. 7       Q. Okay. And so with -- in the context of 8 the Washington office, they would keep the 9 Medicare Working Group informed as to any pending 10 proposals to change the Medicare or Medicaid 11 systems? 12      MS. TABACCHI: Object to the form. 13      THE WITNESS: Yes, sir. 14      BY MR. SISNEROS: 15      Q. So the -- Abbott's Washington office 16 would pass on to the Medicare Working Group any 17 pending legislation regarding Medicare -- 18      MS. TABACCHI: Object to the form. 19      THE WITNESS: Yes, sir. 20      BY MR. SISNEROS: 21      Q. (Continuing) -- or Medicaid? 22      A. Yes, sir.</p>
<p style="text-align: right;">Page 67</p> <p>1 reimbursement, to coverage, however you want to 2 use the words. 3       Q. And the example you've given, the 4 hypothetical you've given, that makes sense 5 because you've testified before that the 6 Washington -- Abbott's Washington office made -- 7 were some of the members of this Working Group, 8 correct? 9       A. Yes, sir. 10      Q. And that would be Cindy Sensibaugh, 11 David Lanslide and Rosemary Haas -- 12      MS. TABACCHI: Object to the form. 13      BY MR. SISNEROS: 14      Q. -- is that right? 15      A. Those are members of the Washington 16 office, yes. 17      Q. And they were part of the Medicare 18 Working Group? 19      A. Yeah. Who was on the phone, again, I 20 do not remember ten years ago. 21      Q. No, I understand. 22      A. Okay.</p>	<p style="text-align: right;">Page 69</p> <p>1       Q. All right. Now, were minutes kept of 2 the Medicare Working Group meetings? 3       A. To the best of my knowledge, minutes 4 were issued for every meeting. 5       Q. Did you take down, write down the 6 minutes or take them down yourself? 7       MS. TABACCHI: Object to the form. 8      BY MR. SISNEROS: 9       Q. I'll just ask it this way. Strike the 10 question. 11      Who was responsible for the minutes of 12 the Medicare Working Group meetings? 13      A. Generally, it would have been Rich 14 Rieger. 15      (Exhibit Miller 1163 was marked 16 for ID) 17      BY MR. SISNEROS: 18      Q. Okay, Mr. Miller, I'm handing you a 19 packet of documents which have been marked and 20 identified as Exhibit Miller 1163 to your 21 deposition, and I'd like for you to take a moment 22 to review those documents.</p>

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1 A. (Witness reviewing document.)	1 the participants in the Medicare Working Group;
2 Q. Mr. Miller, have you had an opportunity	2 is that correct?
3 to review the 11 -- Exhibit Miller 1163?	3 A. That is correct.
4 A. Yes, sir.	4 Q. And in Mr. Rieger's memo of March 7th,
5 Q. All right, just a housecleaning matter,	5 1997 to the Medicare Working Group, he states in
6 I need for you to confirm that Exhibit Miller	6 there that you drafted the minutes of the March
7 1163 consists of five pages. Is that correct?	7 6th, 1997 meeting due to his absence; is that
8 A. Yes, sir.	8 correct?
9 Q. And the documents, each page is Bates	9 A. That's what it says.
10 stamped. And for the record, there are two Bates	10 Q. And then if you look at the second page
11 stamps, one starting ABT and the other one TX	11 of it, Exhibit Miller 1163, having Bates stamp
12 ABT.	12 ABT 52841 is a draft memo from you dated March
13 Starting with the ABT Bates stamp, the	13 7th, 1997 addressed to the distribution list
14 Exhibit Miller 1163 is ABT 52840, 41, 42, 52898	14 regarding the Medicare Working Group meeting
15 and 52899; is that correct?	15 minutes of March 6th, 1997; is that correct?
16 A. That is correct.	16 A. Correct.
17 Q. All right. Now, starting at -- with	17 Q. Is this the memo that -- that -- are
18 the first page of that exhibit, ABT 52840, this	18 these the minutes that you prepared in memo form
19 is an e-mail from Richard Rieger to -- and it's	19 for the March 7th, 1997 Medicare Working Group
20 addressed to the distribution list, Medicare	20 meeting?
21 Working Group minute meetings of March 6th, 1997;	21 A. No.
22 is that correct?	22 Q. No?
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1 MS. TABACCHI: Object to the form.	1 A. It's March 6th.
2 THE WITNESS: Correct.	2 Q. I'm sorry. You are correct. So -- but
3 BY MR. SISNEROS:	3 these are the ones that you produced?
4 Q. Previously, we had an exhibit where it	4 A. Yes.
5 was Exhibit Miller 1162, which should be in front	5 Q. Okay. You've highlighted three points.
6 of you, and if you'd look at the second page of	6 You've got three bullet points, sir, highlighting
7 Exhibit Miller 1162, at the top, it's "Abbott's	7 at least some of the discussion in the meeting,
8 Medicare Working Group distribution list."	8 correct?
9 Do you see that?	9 A. Correct.
10 A. Yes, sir.	10 Q. And one of the -- one of the bullets
11 Q. And your name is on that distribution	11 entitled -- the first bullet is entitled,
12 list; is that correct?	12 "Changing reimbursement price for drugs
13 A. That is correct.	13 administered in physician's office from AWP."
14 Q. Do you -- is it your -- do you expect	14 Do you see that?
15 that you received this memo from Mr. Rieger dated	15 A. Yes, sir.
16 March the 7th, 1997 with the minutes of the March	16 Q. And when you -- when you reference in
17 6th, 1997 meeting?	17 there -- when you wrote in there "a change in
18 A. Yes.	18 reimbursement price," you meant -- you meant any
19 Q. Was -- was Mr. Rieger someone who you	19 proposals before Congress or State Houses that
20 supervised?	20 would change the reimbursement method for drugs
21 A. Yes.	21 administered in a physician's office; is that
22 Q. And he -- he is identified as one of	22 correct?

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<p>1 MS. TABACCHI: Object to the form.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. Well, let me ask you this. When you</p> <p>4 wrote down "changing reimbursement price for</p> <p>5 drugs administered in physician's office from</p> <p>6 AWP," what did you mean?</p> <p>7 A. It was a discussion of a change in the</p> <p>8 methodology for reimbursement of drugs</p> <p>9 administered in the physician office.</p> <p>10 Q. Who was proposing the change?</p> <p>11 A. Which government agency, I do not</p> <p>12 remember.</p> <p>13 Q. But you do remember that it was a</p> <p>14 proposal from the government?</p> <p>15 A. Whether it be states or the federal, I</p> <p>16 do not know.</p> <p>17 Q. But -- that's okay.</p> <p>18 A. Okay.</p> <p>19 Q. But you do recall that there was a</p> <p>20 proposal to change the reimbursement method by</p> <p>21 either the state or the federal government or</p> <p>22 both?</p>	<p>1 MS. TABACCHI: Objection.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. Is that correct?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Rephrase, please.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Okay. There was some discussion</p> <p>8 regarding loss to Abbott if this method off</p> <p>9 reimbursement was made; is that right?</p> <p>10 A. There was --</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: There was a</p> <p>13 quantification of the sales that could be</p> <p>14 impacted. There's no quantification of the</p> <p>15 financial impact.</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. Okay. And do you have any recollection</p> <p>18 now of what that discussion was about the impact</p> <p>19 on -- on these total number of sales?</p> <p>20 A. No, sir.</p> <p>21 Q. All right. The second paragraph under</p> <p>22 that first bullet -- or strike that.</p>
<p style="text-align: right;">Page 75</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: States or federal</p> <p>3 government, yes.</p> <p>4 BY MR. SISNEROS:</p> <p>5 Q. Okay. Do you recall who at the meeting</p> <p>6 discussed this issue or brought this issue up or</p> <p>7 identified this issue?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: No, sir. No.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. Okay. And under that bullet point of</p> <p>12 "changing reimbursement," someone identified that</p> <p>13 Abbott had about almost -- well, 900 million plus</p> <p>14 of sales which would have been affected by this</p> <p>15 proposal; is that right?</p> <p>16 A. Abbott/TAP.</p> <p>17 Q. I'm sorry, Abbott/TAP, yes, correct.</p> <p>18 A. Yes, sir.</p> <p>19 Q. So there was some discussion at least</p> <p>20 about the financial impact in changing of the</p> <p>21 reimbursement method for drugs administered in a</p> <p>22 physician's office, is that --</p>	<p style="text-align: right;">Page 77</p> <p>1 Let's go back to the -- to that -- to</p> <p>2 the first paragraph under the first bullet. In</p> <p>3 it, it reads, "Abbott/TAP has approximately 900</p> <p>4 million plus of sales which would be affected by</p> <p>5 this proposal. The two largest products are</p> <p>6 Lupron and Calcijex."</p> <p>7 Is that correct? Did I read that</p> <p>8 correctly?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay. Then the -- the second paragraph</p> <p>11 under the first bullet point reads, "The</p> <p>12 implementation of a rebate system similar to</p> <p>13 Medicaid was discussed -- discussed as a</p> <p>14 potential alternative to be put forward. TAP</p> <p>15 believes that a rebate system would have a larger</p> <p>16 negative impact on sales than changing to</p> <p>17 acquisition cost."</p> <p>18 Did I read that paragraph correctly?</p> <p>19 A. That's what it says.</p> <p>20 Q. Okay. With respect to that second</p> <p>21 paragraph under that first bullet point, does</p> <p>22 this refresh your recollection that the committee</p>

20 (Pages 74 to 77)

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<p>1 discussed a rebate system as a potential  2 alternative to be put forward?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: That was TAP's view, not  5 the committee's view.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Okay, do you recall why that was TAP's  8 view?</p> <p>9 A. No, sir. I mean, obviously, it says  10 "would have a larger negative impact." That's  11 what I wrote.</p> <p>12 Q. So would it be fair to say from your  13 review of your minutes here that there was some  14 discussion about a rebate system?</p> <p>15 A. There was a mention of a rebate system.  16 I would not call it a discussion.</p> <p>17 Q. Okay. Now, let's look at the second  18 sentence of the second paragraph under the first  19 bullet point. And it reads, "TAP believes that a  20 rebate system would have a larger negative impact  21 on sales than changing to acquisition cost."</p> <p>22 Did I read that correctly?</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Okay, again, directing your attention  3 to the first bullet point in your minutes,  4 "Changing Reimbursement Price," I'd like to go to  5 the last paragraph under that bullet, and I'm  6 going to read it for the record.</p> <p>7 "The group consensus was that  8 acquisition -- strike that. Let me reread it.</p> <p>9 "The group consensus was that  10 (acquisition cost plus) would be the least  11 unfavorable alternative to current Abbott/TAP  12 business."</p> <p>13 Did I read that correctly?</p> <p>14 A. That's as stated.</p> <p>15 Q. All right, and your words "group  16 consensus" suggests to you that there was some  17 discussion of acquisition cost plus?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: I do not know.</p> <p>20 BY MR. SISNEROS:</p> <p>21 Q. I'm sorry?</p> <p>22 A. I do not know.</p>
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<p>1 A. Yes, sir.</p> <p>2 Q. And would it be fair to -- fair to say  3 that, because you wrote that down, that there was  4 at least a mention or a discussion of  5 reimbursement based on acquisition cost?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: There was a mention of  8 acquisition cost.</p> <p>9 MR. SISNEROS: All right, we're taking  10 a break now to switch tapes.</p> <p>11 THE VIDEOGRAPHER: We are off the  12 record at 10:42 a.m. with the end of Tape No. 1.  13 (Recess taken.)</p> <p>14 THE VIDEOGRAPHER: We are back on the  15 record at 10:52 a.m. with the start of Tape No.  16 2.</p> <p>17 BY MR. SISNEROS:</p> <p>18 Q. All right, Mr. Miller, going back to 11  19 -- Exhibit Miller 1163, on the second page Bates  20 numbered ABT 52841, and again, this is your  21 minutes of the March 6th, 1997 Medicare Working  22 Group meeting -- you with me so far?</p>	<p>1 Q. Based on your years of experience at  2 Abbott, would you have written, "The group  3 consensus was that acquisition cost plus was at  4 least unfavorable" if there had not been  5 discussion?</p> <p>6 A. Possib --</p> <p>7 MS. TABACCHI: Objection.</p> <p>8 THE WITNESS: Possibly. There are two  9 groups -- two divisions here, groups, divisions,  10 operations. So I may have used "group" to mean  11 two.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. I don't follow you. Could you --</p> <p>14 A. Sure.</p> <p>15 Q. Could you explain it?</p> <p>16 A. Sure. Lupron is sold by TAP. Calcijex  17 was sold by Household Products Division.</p> <p>18 Q. Okay, so when you say, "The group  19 consensus," are you saying that it's possible  20 that you meant TAP only or -- is that what you're  21 saying?</p> <p>22 A. No, I'm saying it may have meant TAP</p>

21 (Pages 78 to 81)

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<p>1 and HPD agreed.</p> <p>2 Q. And as to their divisions, acquisition</p> <p>3 cost plus was the least unfavorable?</p> <p>4 A. Yes.</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Okay, so -- so -- just so I'm clear</p> <p>8 that what your thinking is, is "the group"</p> <p>9 references the HPD and TAP business's divisions?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. So going back to Exhibit Miller 1162,</p> <p>14 which is the list of participants in the Medicare</p> <p>15 Working Group -- do you have that before you?</p> <p>16 A. Yes, sir.</p> <p>17 Q. The -- the members of HPD would have</p> <p>18 been Michael Heggie, Dave Olson, and Ginny</p> <p>19 Tobiason; is that right?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Those are the members of</p> <p>22 the Working Group.</p>	<p>1 Q. -- is that right, from TAP? John</p> <p>2 Campbell from TAP; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Do you remember meeting him?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Okay, and so getting back to Exhibit</p> <p>7 Miller 1163, on your minutes of March 6th, '97,</p> <p>8 in your -- where you are talking about the group</p> <p>9 consensus regarding acquisition cost plus, the</p> <p>10 individuals that we just discussed from TAP and</p> <p>11 from HPD would have been the individuals that you</p> <p>12 identified as "the group"?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I cannot say that. By MR.</p> <p>15 SISNEROS:</p> <p>16 Q. Well, they would have been from that</p> <p>17 pool of four people; is that right?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: I cannot say that -- I</p> <p>20 cannot say they attended this meeting.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Okay. Well --</p>
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<p>1 BY MR. SISNEROS:</p> <p>2 Q. From HPD?</p> <p>3 A. According to this document.</p> <p>4 Q. Do you have any disagreement with this</p> <p>5 document, the way they are identified, in what</p> <p>6 division they're identified?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: Some of these people I do</p> <p>9 not recall ever meeting.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. Do you remember meeting Michael Heggie?</p> <p>12 A. No.</p> <p>13 Q. Dave Olson?</p> <p>14 A. I -- yes.</p> <p>15 Q. Ginny Tobiason?</p> <p>16 A. Yes.</p> <p>17 Q. All right, then referring again to</p> <p>18 Exhibit Miller 1162, the representative on the</p> <p>19 Medicare Working Group would have been John</p> <p>20 Campbell --</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 BY MR. SISNEROS:</p>	<p>1 A. I do not know.</p> <p>2 Q. You do not know?</p> <p>3 A. No.</p> <p>4 Q. Would there be any basis for you to be</p> <p>5 saying "group consensus" --</p> <p>6 A. I know that there were representatives</p> <p>7 from the two divisions. Who they were, I do not</p> <p>8 know.</p> <p>9 Q. Okay, fair enough. So when -- so when</p> <p>10 you're -- in this paragraph when you use the word</p> <p>11 "group consensus," you are talking about the</p> <p>12 representatives from TAP and the Hospital</p> <p>13 Products Division that would have attended the</p> <p>14 Medicare -- the Medicare Working Group's meeting</p> <p>15 of March 6th, 1997, correct?</p> <p>16 A. That is an accurate representation.</p> <p>17 Q. Okay. All right, back to that -- to</p> <p>18 that -- to your minutes of the March 6th, 1997</p> <p>19 Medicare Working Group meeting. I want to go to</p> <p>20 your third bullet entitled "AMA proposal." Do</p> <p>21 you see that?</p> <p>22 A. Which one?</p>

22 (Pages 82 to 85)

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<p>1 Q. On Exhibit --</p> <p>2 A. Give me --</p> <p>3 Q. Exhibit 63.</p> <p>4 A. What's your lead-in word?</p> <p>5 Q. Oh. So do you see the bullet point?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay.</p> <p>8 A. Okay.</p> <p>9 Q. You know what? I forgot to ask you one</p> <p>10 question. Let me go back to -- to the first</p> <p>11 bullet point.</p> <p>12 On that last paragraph, you put in</p> <p>13 parenthesis the term "acquisition cost plus." Why</p> <p>14 did you do that?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: I do not remember.</p> <p>17 BY MR. SISNEROS:</p> <p>18 Q. Was there a -- well, what does that</p> <p>19 mean?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. What does "acquisition cost plus" mean</p>	<p>1 by that?</p> <p>2 A. No, sir.</p> <p>3 Q. Why -- why was the AMA proposal being</p> <p>4 discussed by the Medicare Working Group?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: I recall there was</p> <p>7 discussion, as the memo states, on getting a</p> <p>8 position for Abbott.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. Position regarding what?</p> <p>11 A. The AMA proposal.</p> <p>12 Q. Why did you list that the AMA had as a</p> <p>13 priority that the physician act as a patient</p> <p>14 advocate?</p> <p>15 A. That's what the representative from PPD</p> <p>16 put forward.</p> <p>17 Q. Why -- why was the -- why was that of a</p> <p>18 concern to the -- to the representative from PPD?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I don't know if it was a</p> <p>21 concern.</p> <p>22 BY MR. SISNEROS:</p>
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<p>1 to you, sir?</p> <p>2 A. As used here, I do not know. I don't</p> <p>3 recall.</p> <p>4 Q. All right. All right, let's go back to</p> <p>5 your third bullet point entitled, "The AMA</p> <p>6 proposal." Do you see that? Do you see that</p> <p>7 bullet?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. Underneath it states the</p> <p>10 following: "AMA has three priorities:</p> <p>11 Implementation of prescription plan for fee-for-</p> <p>12 service Medicare, physician as patient advocate,</p> <p>13 continuing funding of U.S. citizens' graduate</p> <p>14 medical education."</p> <p>15 Do you see that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. All right. With regard to -- well, did</p> <p>18 I read that accurately?</p> <p>19 A. That's as stated.</p> <p>20 Q. As stated, okay. Now, with regard to</p> <p>21 "implementation of prescription plan for fee-for-</p> <p>22 service Medicare," do you recall what you meant</p>	<p>1 Q. Okay. All right, turn to the next page</p> <p>2 of that -- of your -- of your minutes of the</p> <p>3 March 6th, '97 Medicare Working Group meeting.</p> <p>4 A. (Witness so doing.)</p> <p>5 Q. The second paragraph under your third</p> <p>6 bullet entitled "AMA proposal" reads as follows:</p> <p>7 "Recommendation is that Abbott continue to attend</p> <p>8 AMA meetings in a low profile status and avoid</p> <p>9 putting forward any Abbott's position."</p> <p>10 Did I read that correctly?</p> <p>11 A. Correct. That's what it states.</p> <p>12 Q. Why was -- why was Abbott trying to</p> <p>13 maintain a low profile with the AMA?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. Or, rather, why was Abbott trying to</p> <p>17 maintain a low profile with regards to the AMA's</p> <p>18 proposal for Medicare reform?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I'd be speculating.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Well, you attended these meetings?</p>

23 (Pages 86 to 89)

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1 MS. TABACCHI: Object to the form. 2 THE WITNESS: I did not attend the AMA 3 meetings. 4 BY MR. SISNEROS: 5 Q. Were you ever informed of what went on 6 -- well, Abbott had representatives at the AMA 7 meeting, correct? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: Yes. 10 BY MR. SISNEROS: 11 Q. They were briefing you as to what was 12 going on at those meetings, correct? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: Correct. 15 BY MR. SISNEROS: 16 Q. So you were aware of the discussions on 17 the AMA Medicare proposals? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: Abbott typically takes a 20 low profile on any controversial issue. 21 BY MR. SISNEROS: 22 Q. Why was the AMA proposal for Medicare	1 MS. TABACCHI: Object to the form. 2 THE WITNESS: Our position was to be 3 neutral in relationship to our customers whenever 4 possible. 5 BY MR. SISNEROS: 6 Q. And when you say "to our customers," 7 what customers are you identifying? Who do you 8 mean? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: In this particular case, 11 I'm referring to physicians. They're the 12 prescribers of our products. 13 BY MR. SISNEROS: 14 Q. I believe you just testified that the 15 physicians were in favor of the AMA proposal? 16 A. I did not. 17 MS. TABACCHI: Object to the form. 18 BY MR. SISNEROS: 19 Q. I'm sorry, what is that is that you 20 said? 21 A. I said there were physicians in favor 22 and physicians against.
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1 reform controversial? 2 A. There were people that supported both 3 sides. 4 Q. When you say, "There were people who 5 supported both sides," are you talking about 6 people in Abbott's -- Abbott -- Abbott folks? 7 A. Our customers. 8 Q. Okay, give me some examples. 9 A. I'm sure that all the doctors a hundred 10 percent agreed with the AMA proposal. 11 Q. And who would not? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: I'm not qualified to 14 answer that. 15 BY MR. SISNEROS: 16 Q. Well, what was your understanding? 17 Because you were being briefed on these -- on 18 those proposals. 19 A. My understanding was there was 20 controversy with the proposal. 21 Q. And with regard to Abbott's interests, 22 where was that controversy?	1 Q. I see. And who were physicians who 2 were in favor of the AMA proposal? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: I am not qualified to 5 answer to that question. 6 BY MR. SISNEROS: 7 Q. Okay. And further on in that second 8 paragraph under the third bullet, it says that -- 9 that "the recommendation was to avoid putting 10 forward -- forward any of Abbott's positions." 11 Why was that? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: Abbott's historical 14 position is that we take a neutral position 15 whenever possible. 16 BY MR. SISNEROS: 17 Q. At this very time, the AMA was seeking 18 Abbott's position? 19 A. I do not know if Abbott ever gave a 20 position to the AMA. 21 Q. Okay, but that wasn't my question. My 22 question was is that the AMA was actually seeking

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<p>1 Abbott's position; is that correct?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: I do not know that.</p> <p>4 BY MR. SISNEROS:</p> <p>5 Q. You do not know that?</p> <p>6 A. No. Only the divisional</p> <p>7 representatives would know that.</p> <p>8 MR. SISNEROS: Okay. All right.</p> <p>9 (Exhibit Miller 1164 was marked</p> <p>10 for ID)</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. All right, I've -- I'm handing you what</p> <p>13 I've marked and identified as Exhibit Miller</p> <p>14 1164, Exhibit Miller 1164 to your deposition.</p> <p>15 Would you take a moment and review it?</p> <p>16 I believe it's about 13 pages.</p> <p>17 MR. HOFFMAN: Thank you.</p> <p>18 MS. TABACCHI: Thank you.</p> <p>19 (Witness reviewing document.)</p> <p>20 THE WITNESS: Okay.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Ready to go, Mr. Miller?</p>	<p>1 - about the seventh page from the end. Tell me</p> <p>2 when you're there, please.</p> <p>3 A. I'm there.</p> <p>4 Q. Okay. And that is a memo dated January</p> <p>5 15th, 1997 from Rich -- Richard Rieger to the</p> <p>6 Medicare Working Group; is that correct?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: Correct.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. And it's regarding the upcoming meeting</p> <p>11 on January 21st, 1997, Medicare Working Group</p> <p>12 meeting with a proposed agenda; is that right?</p> <p>13 A. Correct.</p> <p>14 Q. And this email -- excuse me, this memo</p> <p>15 is directed to you? You're carbon copied on</p> <p>16 that; is that right?</p> <p>17 A. I am cc'd.</p> <p>18 Q. And in the ordinary course of business</p> <p>19 in your years at Abbott, if Mr. Rieger had cc'd</p> <p>20 you a memo, you expect that you would have</p> <p>21 received it?</p> <p>22 A. In the ordinary course, yes.</p>
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<p>1 A. Yes, sir.</p> <p>2 Q. Okay, just for housecleaning purposes,</p> <p>3 I am going to identify Exhibit Miller 1163 by</p> <p>4 Bates stamp numbers, and I'd like for you to</p> <p>5 verify that I've identified it correctly by the</p> <p>6 Bates stamp numbers.</p> <p>7 A. This is Exhibit Miller 1164, sir.</p> <p>8 Q. Oh, it is? Well, thank you for that.</p> <p>9 That's great housecleaning then.</p> <p>10 Okay, with respect to 11 -- Exhibit</p> <p>11 Miller 1164, I'll identify the pages by the ABT</p> <p>12 number, and it is ABT 52705, 52706, 52707, 52710,</p> <p>13 52711, 52712, 52808, 52809, 52810, 52811, 52836,</p> <p>14 52837, 52838.</p> <p>15 Do you have all those pages with you?</p> <p>16 A. Yes, sir.</p> <p>17 Q. You -- and that's the total pages</p> <p>18 you've got --</p> <p>19 A. Yes, sir.</p> <p>20 Q. -- for Exhibit Miller 1164?</p> <p>21 All right, I'd like to ask you some</p> <p>22 questions starting at ABT 52808, which is about -</p>	<p>1 Q. And was it your practice that when you</p> <p>2 received memos such as this in the ordinary</p> <p>3 course of business, that you would have reviewed</p> <p>4 the memo or read it?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: 52808 and 52809 consists</p> <p>7 of what the email system could have transmitted.</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. Is that an e-mail?</p> <p>10 A. Well, I call it -- it's -- it's</p> <p>11 internal email, yes.</p> <p>12 Q. This interoffice correspondence was an</p> <p>13 internal email? This was received in email form</p> <p>14 -- format, you're saying?</p> <p>15 A. I wouldn't bet my life on it, but --</p> <p>16 Q. Okay.</p> <p>17 A. -- I think so.</p> <p>18 Q. Well, my question was if you had</p> <p>19 received --</p> <p>20 A. Either hard copy or email, I would have</p> <p>21 typically read this document.</p> <p>22 Q. Okay. And Mr. Rieger is in this -- in</p>

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<p>1 this memo identifying points to be discussed at  2 the next -- or, rather, strike that.  3       He is identifying matters that members  4 want to discuss at the next Medicare Working  5 Group meeting, correct?  6       MS. TABACCHI: Object to the form.  7       THE WITNESS: That's as stated.  8 BY MR. SISNEROS:  9       Q. And one of the bullet points that he  10 brings up is they -- someone wants "to discuss  11 average wholesale price versus actual cost  12 issue."  13       Do you see that?  14       A. That is what's stated.  15       Q. Do you know what is meant by "average  16 wholesale price"?  17       A. Do I know what's -- no.  18       Q. You do not know? You never heard that  19 term before?  20       A. I've read the term.  21       MS. TABACCHI: Object to the form.  22 BY MR. SISNEROS:</p>	<p>1 deposition.  2       Could you please review that?  3       A. (Witness reviewing document.)  4       Q. Have you had a chance to review it?  5       A. Yes.  6       Q. Mr. Miller, that is an undated copy of  7 handwritten notes on what appears to be a pad  8 "From the desk of James E. Miller." Do you see  9 that?  10      A. Correct.  11      Q. Is that -- is that you?  12      A. That's me.  13      Q. And is that your handwriting?  14      A. That is my handwriting.  15      Q. Could you please -- who is it addressed  16 to?  17      A. Rich Rieger.  18      Q. And -- and could you please read into  19 the record what you -- what is -- you've written  20 down in this handwritten message?  21      A. "Medicare allowable equals AWP.  22 Medicare pays physician 80% of Medicare</p>
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<p>1       Q. You've read the term?  2       A. (Witness nodding.)  3       Q. What do you mean you've read the term?  4       A. It's in newspapers, it's in magazines.  5 It's a common term.  6       Q. You have no idea how it's defined?  7       A. I've never been responsible for its  8 calculation or setting.  9       Q. Well, no, I understand that. My  10 question is do you know what it is?  11       MS. TABACCHI: Object to the form.  12       THE WITNESS: No.  13       In 52706, there is a definition.  14       MR. SISNEROS: We'll get to that in a  15 minute.  16       THE WITNESS: Okay, fine.  17       (Exhibit Miller 1165 was marked  18 for ID)  19 BY MR. SISNEROS:  20       Q. All right, I am handing to you for your  21 review what I've -- what's been marked and  22 identified as Exhibit Miller 1165 to your</p>	<p>1 allowable. AWP's equals acquisition cost plus 20  2 to 25%."  3       Q. And going to that first line where you  4 wrote, "Medicare allowable equals AWP," do you  5 mean by that that that is the amount that  6 Medicare pays or reimburses a provider?  7       MS. TABACCHI: Object to the form.  8       THE WITNESS: I have no idea what this  9 buck slip was in relationship to.  10 BY MR. SISNEROS:  11       Q. Well, okay, but that wasn't my question  12 if what you wrote down was in -- what you wrote  13 down was in relationship to. But my question was  14 "Medicare allowable," what does that mean to you?  15       A. It says, "Medicare allowable equals  16 AWP."  17       Q. And this note, it was -- it was  18 directed at Mr. Rieger, who you supervised; is  19 that correct?  20       A. That is correct.  21       Q. Is it fair to say that this was  22 information you were providing him?</p>

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<p style="text-align: right;">Page 102</p> <p>1 A. No.    2 Q. No?    3 A. No.    4 Q. Why not?    5 A. I would say it is information I wanted    6 verified.    7 Q. Why do you say that?    8 A. Why do you say I was providing him    9 information?    10 Q. Because it's directed to him in your    11 note, sir.    12 A. Right. But I look at it and say    13 somebody gave me this. I gave it to Rich to be a    14 verified.    15 Q. Okay. So at some point -- and this is    16 undated, correct?    17 A. It -- there is no date.    18 Q. At some point, you had information that    19 you believe was provided to you that stated that    20 "AWP equalled acquisition cost plus 20 to 25%    21 markup," right?    22 A. Yes.</p>	<p style="text-align: right;">Page 104</p> <p>1 -- strike that.    2 Underneath the first bullet point, the    3 products that he's identified, Abbott products    4 he's identified for this discussion are "Lupron,    5 Medical Nutritionals, Calcijex, and Other Abbott    6 Products"; is that correct?    7 A. Correct.    8 Q. And Lupron, I believe from your earlier    9 testimony, would be TAP?    10 A. Correct.    11 Q. The Medical Nutritionals, what division    12 would that be, if you know?    13 A. Ross Laboratories.    14 Q. Calcijex?    15 A. Hospital Products.    16 Q. And do you recall what other Abbott    17 products might have been discussed at the January    18 21, '97 meeting?    19 A. I do not, sir.    20 Q. Okay. And then the second bullet point    21 is "a review of proposed legislation regarding    22 to -- regarding diabetes outpatient self</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. All right, let's go back now to Exhibit    2 Miller 1164, to Mr. Rieger's January 15th, 1997    3 memo to the Medicare Working Group starting at    4 ABT 52808. Are you there, sir?    5 A. Yes, sir.    6 Q. Okay. Back to the first bullet point.    7 Mr. Rieger has identified some areas that -- for    8 the agenda -- some topics for the agenda for the    9 January 21, 1997 Working Group meeting; is that    10 correct?    11 A. Correct.    12 Q. And one of those is "a discussion of    13 the average wholesale price versus the actual    14 cost issue." Do you see that?    15 A. Yes, sir.    16 Q. Does that have any meaning to you, that    17 bullet point?    18 A. No.    19 Q. Okay. And underneath that bullet    20 point, there has been -- he has identified    21 basically four products from Abbott in which this    22 item -- this item is of concern -- well, I don't</p>	<p style="text-align: right;">Page 105</p> <p>1 management service."    2 Do you see that?    3 A. Yes, sir.    4 Q. All right, so would it be fair to say    5 that one of the points of discussion that would    6 be brought up before the Medicare Working Group    7 was pending legislation?    8 MS. TABACCHI: Objection to form.    9 (Witness reviewing document.)    10 THE WITNESS: Yes.    11 BY MR. SISNEROS:    12 Q. Okay. And, finally, with regard to Mr.    13 Rieger's January 15th, 1997 memo to the Medicare    14 Working Group, towards the end of that memo, he    15 is identifying two attachments for your reading.    16 One is a document relating to AWP. Another one    17 is President Clinton's expected '98 budget    18 proposal.    19 Do you see that?    20 A. Something's not in order. Blah-blah-    21 blah-blah. Here's Clinton's proposal. Oh, wait.    22 Q. Actually, I'm just referring to his</p>

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<p style="text-align: right;">Page 106</p> <p>1 memo.    2 A. Oh, okay fine.    3 Q. Let's go to that paragraph --    4 A. Okay.    5 Q. -- the last paragraph of ABT 52808.    6 In there, Mr. Rieger is telling the    7 Medicare Working Group that he is attaching two    8 documents, one relating to AWP, and an article    9 relating to President Clinton's '98 budget    10 proposal; is that right?    11 A. That's what it says.    12 Q. Okay, and if Mr. -- and earlier, I'd    13 asked you if -- in the normal course of business    14 if Mr. Rieger sent out a memo such as this to the    15 Working Group, including you, you know, would you    16 normally have received it, and I believe you    17 said, "Yes." Is that right?    18 A. That is correct.    19 Q. And if he had attached -- if he had    20 attachments to his memo, would you normally have    21 reviewed them?    22 A. It depends on how voluminous they were.</p>	<p style="text-align: right;">Page 108</p> <p>1 THE WITNESS: Yes.    2 BY MR. SISNEROS:    3 Q. And if you could review at the top of    4 52810, one of the articles attached by Mr. Rieger    5 to his memo, the -- basically what would be the    6 second paragraph starting with, "Health News    7 Daily via Individual, Inc." Do you see that, the    8 beginning of that paragraph?    9 A. Yes, sir.    10 Q. And it's an introduction paragraph. Do    11 you see where they are basically summarizing    12 that, "The new Medicare outpatient drug coverage    13 be based on actual cost rather than AWP." Do you    14 see -- do you see what that mem -- see that?    15 A. Yes, sir.    16 Q. Okay, earlier in your testimony, --    17 well, strike that.    18 Now, if you go back to ABT 5808, the    19 beginning of Mr. Rieger's January 15th, 1997    20 memo, and look at the first bullet point there,    21 "Discussed average wholesale price versus actual    22 cost issue," do you see that?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. I know what you mean. But do you    2 believe that -- if you turn over to Page 52810 --    3 A. 52810.    4 Q. -- which sequentially follows the end    5 of his memo, 52809. That's the end of Mr.    6 Rieger's memo, and then the attachment is 52810.    7 Do you see that?    8 A. Yes.    9 Q. And they're talking about "President    10 Clinton's expected proposed Medicare outpatient    11 drug coverage." Do you see that?    12 A. Yes.    13 Q. Okay, and if you look at -- just look    14 to the next page, that particular article ends at    15 52811. Do you see that?    16 A. Yes.    17 Q. All right, with -- with respect to the    18 two-page article, it would -- the attached    19 article would have been only two pages. Was it    20 your normal practice to review small articles    21 such as that?    22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Yes, sir.    2 Q. Do you believe that "actual cost" point    3 raised in that bullet may reference President    4 Clinton's proposal that reimbursement of    5 outpatient drugs be based on actual cost rather    6 than AWP?    7 MS. TABACCHI: Object to the form.    8 THE WITNESS: I do not know.    9 BY MR. SISNEROS:    10 Q. Does reviewing the article in any way    11 refresh your recollection about the actual cost    12 issue?    13 A. I would have read this and said,    14 "Actual cost would never be approved."    15 Q. Why would you say that?    16 A. I spent nine years in manufacturing    17 accounting. You can get 40 cost accountants on    18 the head of a pin, and they will never agree on    19 actual cost.    20 Q. Because each one of them would have a    21 different definition for --    22 A. Yes, sir.</p>

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<p style="text-align: right;">Page 110</p> <p>1 Q. -- actual cost?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Well, that's interesting because in</p> <p>4 that Exhibit number -- that last one I had,</p> <p>5 Exhibit Miller 1165, can you turn to that?</p> <p>6 A. Exhibit Miller 1165? Which is Exhibit</p> <p>7 Miller 1165?</p> <p>8 Q. It's your handwritten note to Rich</p> <p>9 Rieger on AWP.</p> <p>10 A. Um-hum.</p> <p>11 Q. Do you see that last line, "AWP equal</p> <p>12 acquisition cost plus a markup of 20 to 25%"?</p> <p>13 A. Right.</p> <p>14 Q. Although we're uncertain where that</p> <p>15 information came from, at least that would be one</p> <p>16 of the viewpoints an accountant might have about</p> <p>17 the relationship of acquisition cost to AWP?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: No, no, no. You're</p> <p>20 changing the words. Actual cost and acquisition</p> <p>21 cost are not synonymous.</p> <p>22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 112</p> <p>1 the purpose of the Medicare Working Group was.</p> <p>2 A. (Witness nodding.)</p> <p>3 Q. Remember that?</p> <p>4 A. Yes.</p> <p>5 Q. And do you -- and do you recall that</p> <p>6 you testified, you said you folks -- that you</p> <p>7 folks were looking at how third-party payers were</p> <p>8 being paid -- were being reimbursed?</p> <p>9 MS. TABACCHI: Object to the --</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. Is that accurate?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 BY MR. SISNEROS:</p> <p>14 Q. Or at least -- strike it.</p> <p>15 Was one of the things your group was</p> <p>16 looking at was how third-party payers were being</p> <p>17 reimbursed?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: We were updated, as I</p> <p>20 stated earlier, on proposed pending legislation</p> <p>21 in the federal government or the states.</p> <p>22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. What's the difference?</p> <p>2 A. Acquisition cost could be defined as</p> <p>3 what somebody paid for a service or product.</p> <p>4 Actual cost is something that is only calculated,</p> <p>5 in my understanding, for somebody like the IRS in</p> <p>6 a tax suit.</p> <p>7 Q. Okay, well, let's talk about</p> <p>8 acquisition cost in your handwritten notes on</p> <p>9 Exhibit Miller 1165.</p> <p>10 With regard to your last line there,</p> <p>11 "AWP equals acquisition cost plus a markup of 20</p> <p>12 to 25%," would "acquisition cost" in that context</p> <p>13 reference what one of your customers bought the</p> <p>14 product for?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: I do not know. Someone</p> <p>17 gave me that information. Who at Abbott, I do</p> <p>18 not recall.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. Well, let me ask you -- let me ask you</p> <p>21 this, and this is backing off a little bit.</p> <p>22 Earlier, you gave testimony about generally what</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Concerning reimbursement?</p> <p>2 A. Concerning financial coverage of</p> <p>3 products.</p> <p>4 Q. Okay, and I think you testified earlier</p> <p>5 that when you say "financial coverage of</p> <p>6 products," it would be another word for the word</p> <p>7 "reimbursement"?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: But not specific product</p> <p>10 pricing.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. You were interested in the formula? -</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. (Continuing)-- for reimbursement?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I don't know if I can</p> <p>18 answer that.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. Well, I don't think I understand what</p> <p>21 it is that you were doing.</p> <p>22 How -- I mean I don't understand how</p>

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<p>1 you could -- why were you doing -- looking at the  2 coverage of product to third-party payers?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Recognize this was a one-  5 hour meeting every six weeks. It wasn't an in-  6 depth study of anything.</p> <p>7 BY MR. SISNEROS:</p> <p>8 Q. I understand that.</p> <p>9 A. Okay.</p> <p>10 Q. But this was one of your first  11 assignments when you had been promoted -- you had  12 received a promotion -- I think you testified  13 earlier this was 30 days into your new promotion  14 this was laid on your lap; is that right?</p> <p>15 A. But this didn't -- was not, as I stated  16 earlier, this was not my primary job duties.</p> <p>17 Q. I understand. But your boss gave you  18 this job, your immediate supervisor; is that  19 right?</p> <p>20 A. I understand.</p> <p>21 Q. Okay. And so what I'm trying to  22 identify here is when you say you were looking at</p>	<p>1 Q. Okay. All right, now back to Mr.  2 Rieger's memo dated January 15th, 1997 directed  3 to the Medicare Working Group starting at ABT  4 52808.</p> <p>5 In the second sentence of the last  6 paragraph, he -- it states, "This is in addition  7 to the documents that I previously sent to you on  8 12/20/96 regarding AWP and competitive bidding."  9 Do you see that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. So it suggests that the Medicare  12 Working Group was already receiving at least  13 background information of some sort in late 1996;  14 is that right?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: The memo states he mailed  17 something. I don't know.</p> <p>18 BY MR. SISNEROS:</p> <p>19 Q. Okay. But that would have been in late  20 '96?</p> <p>21 A. 12/26, right.</p> <p>22 Q. Okay, all right. All right, now</p>
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<p>1 the coverage of product for third-party payers,  2 what you mean by that.</p> <p>3 A. We're looking at proposed sweeping  4 changes to reimbursement levels or methodology  5 for products.</p> <p>6 Q. And to understand the impact of  7 proposed legislation on reimbursement  8 methodology, wouldn't you have to understand the  9 existing methodology of reimbursement?</p> <p>10 A. That responsibility rests with a  11 division. Divisions market and sell products, not  12 corporate.</p> <p>13 Q. Now, I understand that, but did you as  14 a member of this Working Group get some type of  15 basic knowledge on how reimbursement worked?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I understand the broad  18 concepts of reimbursement.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. And would Exhibit Miller 1165 at least  21 demonstrate a concept someone fed to you?</p> <p>22 A. Yes.</p>	<p>1 turning to -- your attention to the same exhibit,  2 Exhibit Miller 1164, at Page 52711.</p> <p>3 A. Okay. Yes, sir.</p> <p>4 Q. And this is a -- this is a -- this is a  5 memo from Cynthia Sensibaugh in your Washington  6 office to Mr. Rieger dated January 17th, 1997  7 regarding the Medicare conference call; is that  8 right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And in her -- in her memo, she  11 references two articles that she's included, one  12 of which is an article regarding AWP.  13 If you look at the last sentence of her  14 memo, "Also encloses an article about awp," do  15 you see that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay, and then the document following  18 her memo is ABT 52712, while Miss Sensibaugh's  19 memo is ABT 52711. So are you at 712?</p> <p>20 A. Either one.</p> <p>21 Q. Okay, at 712. ABT 52712, do you see  22 that?</p>

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<p style="text-align: right;">Page 118</p> <p>1 A. Yes, sir.    2 Q. And it's something called "the Pink    3 Sheet" where it -- entitled, "AWP overstates    4 actual pharmacy invoice cost for brand name drugs    5 by average of 18.3% nationwide, HHS IG    6 concludes;" and then, "Generic AWP overstates    7 costs by 42.5%."    8 Do you see that?    9 A. Yes, sir.    10 Q. Do you recall ever seeing this    11 document?    12 MS. TABACCHI: Object to the form.    13 THE WITNESS: No.    14 BY MR. SISNEROS:    15 Q. Okay. All right, turn to -- to Exhibit    16 Miller 1164, same exhibit, to document -- I mean    17 to page ABT 52710.    18 A. 52710. Yes, sir.    19 Q. All right, and you see that is a memo    20 from Richard Rieger dated January the 20th, 1997    21 and it's addressed to the Medicare Working Group    22 and cc'd to you. Do you see that?</p>	<p style="text-align: right;">Page 120</p> <p>1 BY MR. SISNEROS:    2 Q. Did you have any input into "points to    3 be discussed" in the Medicare Working Group    4 meeting? Did you suggest any points for the    5 agenda?    6 MS. TABACCHI: Object to the form.    7 THE WITNESS: I would have generally    8 seen the agendas before they were issued.    9 BY MR. SISNEROS:    10 Q. Okay. Did you have veto power over the    11 setting of an agenda?    12 MS. TABACCHI: Object to the form.    13 THE WITNESS: Yes.    14 BY MR. SISNEROS:    15 Q. Under what circumstances would you veto    16 items on an agenda?    17 A. We did not allow any specific pricing    18 discussions.    19 Q. Why not?    20 A. We had members from various divisions    21 in that room. We didn't allow it.    22 Q. Okay, you had members from different</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Yes, sir.    2 Q. And then the body of his memo to    3 everyone is just basically a one-liner. It says,    4 "F.Y.I. Attached is updated information I    5 received from Cindy Sensibaugh in preparation for    6 1/21/97 Medicare Working Group."    7 Do you see that?    8 A. Yes, sir.    9 Q. Okay. And the Bates stamp on Rieger's    10 memo of January the 20th is ABT 52710. The Bates    11 stamp for Sensibaugh's memo to Rieger is ABT    12 52711, correct?    13 A. Correct, sir.    14 Q. And then the article on AWP from the    15 Pink Sheet is ABT 52712; is that right?    16 A. Yes, sir.    17 Q. Okay. Now, let's turn back to Mr.    18 Rieger's January 15th, 1997 memo. And did you --    19 MR. HOFFMAN: Where are we now?    20 MR. SISNEROS: Oh, I'm sorry, ABT    21 52808.    22 MR. HOFFMAN: Okay.</p>	<p style="text-align: right;">Page 121</p> <p>1 divisions, but why wouldn't you allow it?    2 Why is it -- why would have different -    3 - having members from different divisions    4 preclude a discussion of pricing?    5 A. We didn't feel it was legally correct.    6 Q. Did an attorney tell you that?    7 MS. TABACCHI: Object to the form of    8 the question.    9 And I'm also going to instruct the    10 witness not to reveal the substance of any    11 communications with counsel.    12 THE WITNESS: I refuse -- I'm not going    13 to answer.    14 MS. TABACCHI: Okay.    15 BY MR. SISNEROS:    16 Q. Were there any attorneys in the    17 Medicare Working Group?    18 A. There are none on the distribution    19 list.    20 Q. I understand, but that's not my    21 question. Was there an attorney in the Medicare    22 Working Group?</p>

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<p>1 A. I do not recall.</p> <p>2 Q. Did the Medi -- did the Medicare</p> <p>3 Working Group seek the advice of counsel on its</p> <p>4 operations?</p> <p>5 MS. TABACCHI: Object to the form of</p> <p>6 the question.</p> <p>7 I'm going to caution the witness not to</p> <p>8 reveal the substance of any communications --</p> <p>9 THE WITNESS: I'm not going to answer</p> <p>10 that question.</p> <p>11 MR. SISNEROS: I'm not asking for</p> <p>12 communication. I'm just asking whether the</p> <p>13 Medicare Working Group consulted with an attorney</p> <p>14 regarding its work.</p> <p>15 MS. TABACCHI: And I'm just going to</p> <p>16 caution the witness not to --</p> <p>17 MR. SISNEROS: That's a yes or no</p> <p>18 question.</p> <p>19 MS. TABACCHI: I'm just going to</p> <p>20 caution the witness not to reveal the substance</p> <p>21 of any attorney-client communications.</p> <p>22 If the witness has difficulty</p>	<p>1 Again, I'm going to caution the witness</p> <p>2 not to reveal the substance of any communications</p> <p>3 with counsel.</p> <p>4 MR. SISNEROS: And it's a yes or no</p> <p>5 question.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Answer the question, please.</p> <p>8 MR. SOFFER: If you can answer that</p> <p>9 question with a "yes" or a "no," you may do so.</p> <p>10 THE WITNESS: I'm going to say I don't</p> <p>11 know.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. You don't know?</p> <p>14 A. Right. It's ten years ago.</p> <p>15 Q. All right.</p> <p>16 Okay, let's turn over to the beginning</p> <p>17 page of Exhibit Miller 1164 --</p> <p>18 A. Okay.</p> <p>19 Q. -- ABT 52705. You there?</p> <p>20 A. Um-hum.</p> <p>21 Q. And that is a January 29th, 1997 memo</p> <p>22 to the Medicare Working Group from Mr. Rieger; is</p>
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<p>1 navigating this issue, I suggest he consult with</p> <p>2 his counsel.</p> <p>3 THE WITNESS: Let's take a break.</p> <p>4 MR. SISNEROS: I'm sorry?</p> <p>5 THE WITNESS: Let's take a break.</p> <p>6 MR. SISNEROS: Well, it's in the middle</p> <p>7 of a question. It's a yes or no answer.</p> <p>8 Could we have the yes or no answer?</p> <p>9 MS. TABACCHI: It's a difficult</p> <p>10 question, Mr. Sisneros, that you're asking. But</p> <p>11 your question asks both for the -- it could call</p> <p>12 for the substance of a communication.</p> <p>13 MR. SISNEROS: Okay.</p> <p>14 MS. TABACCHI: So it's not an easy</p> <p>15 question to answer.</p> <p>16 MR. SISNEROS: Okay. Well, let me ask</p> <p>17 the question in a way that doesn't ask for</p> <p>18 anything that would have been discussed.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. The question is did the Medicare</p> <p>21 Working Group have an attorney it consulted with?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p>1 that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay, and previously we have identified</p> <p>4 in one of the exhibits who the Medicare Working</p> <p>5 Group was, and that would have included you,</p> <p>6 correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And so in the normal course of</p> <p>9 business, do you expect that you would have</p> <p>10 received this January 29th, 1997 memo from Mr.</p> <p>11 Rieger?</p> <p>12 A. Yes, sir.</p> <p>13 Q. All right, and in this memo, Mr. Rieger</p> <p>14 in that first paragraph -- well, let me read the</p> <p>15 first paragraph.</p> <p>16 "Since Medicare seems to be heating up,</p> <p>17 our Working Group seems interested in continuing</p> <p>18 to meet and others are becoming interested in</p> <p>19 what we are doing. Jim and I would like to find</p> <p>20 a way to communicate outside of our Working</p> <p>21 Group. To that end, we are thinking about</p> <p>22 documenting each of our Working Group meetings</p>

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<p>1 via minutes and using this as a communications  2 tool."</p> <p>3 Did I read that correctly?</p> <p>4 A. As stated.</p> <p>5 Q. And the reference to "Jim and I" in  6 that paragraph, he's talking about you?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And what he's referencing when he says  9 "Jim and I," he is talking -- he is saying that  10 the two of you are trying to find a way to  11 communicate outside of the Medicare Working  12 Group; is that right?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: Outside of the Medicare  15 Working Group meetings.</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. Okay, when -- you wanted to communicate  18 to who?</p> <p>19 A. Not everybody was able to attend every  20 meeting.</p> <p>21 Q. Okay.</p> <p>22 A. So how did you keep the people informed</p>	<p>1 paragraph.  2 "However, in order to do this  3 effectively, we need your help in making sure  4 that the information that we have captured is  5 accurate. Attached are the minutes from the last  6 meeting based upon the notes that Jim and I took  7 and which we would like you to review. I would  8 appreciate any comments that you can provide, be  9 it errs, omissions, embellishments, points, et  10 cetera. Also if you have any suggestions for an  11 alternative or more efficient way of capturing  12 these communications, I would appreciate that  13 feedback as well."</p> <p>14 Did I read that correctly?</p> <p>15 A. As stated.</p> <p>16 Q. Okay, and consistent with -- with that  17 earlier exhibit of the March minutes, Mr. Rieger  18 is identifying you and he as the ones that were  19 keeping minutes of the meetings, correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And with respect to the -- excuse me.  22 And with respect to the minutes of the meeting</p>
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<p>1 who could not attend the meetings?</p> <p>2 Q. Well, the sentence says -- starting  3 where it says "Jim and I," it says, "Jim and I  4 would like to find a way to communicate outside  5 of our Working Group."</p> <p>6 A. He left out "meetings."</p> <p>7 Q. I'm sorry?</p> <p>8 A. He left out the word "meetings." If  9 you look, the vehicle of communication that was  10 recommended was the minutes of the meetings.</p> <p>11 Q. So what you're -- what you and Jim  12 talked about was using the minutes as a  13 communications tool with members within the  14 Medicare Working Group? Is that what you're  15 saying?</p> <p>16 MS. TABACCHI: Objection.</p> <p>17 THE WITNESS: Who did not attend the  18 meetings.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. Who did not attend the meetings. Okay,  21 all right. All right, and then in the second  22 paragraph, he reference -- I'll read the second</p>	<p>1 preceding this January 29th, 1997 date, you and  2 Rieger took minutes of that meeting as well,  3 correct?</p> <p>4 MS. TABACCHI: Object to the form.  5 (witness reviewing document.)</p> <p>6 THE WITNESS: I cannot tell you that I  7 was even at the meeting.</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. Well, look at the second page of  10 Exhibit Miller 1164, the page right behind Mr.  11 Rieger's memo.</p> <p>12 A. Um-hum.</p> <p>13 Q. Okay, and the Bates stamp on that --  14 and, by the way, this is Abbott's Bates stamp.  15 This is ABT 52706. Do you see that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And Mr. Rieger, the memo, the page  18 before it is ABT 52705. Do you see that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So the two pages are sequential. You  21 follow me?</p> <p>22 A. Yes, sir.</p>

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<p style="text-align: right;">Page 130</p> <p>1 Q. Okay. And 52706 references minutes 2 from Medicare Working Group meeting on 1/21/97. 3 Do you see that? 4 A. 1/21/97? Yes. 5 Q. You see that? It's the page right 6 after Mr. Rieger's memo, sir, the second page. 7 A. Right. 8 Q. Okay, so this exhibit shows that there 9 are minutes for a meeting that occurred January 10 the 21st, 1997, correct? 11 A. Correct. 12 Q. And the first page of Exhibit Miller 13 1164, Mr. Rieger's memo, is dated January the 14 29th, 1997, correct? 15 A. Correct. 16 Q. And -- and that's -- Mr. Rieger's memo 17 is like eight days later after the minutes of the 18 meeting, correct? 19 A. The meeting was the twenty -- yeah. 20 Q. Okay. 21 A. Correct. 22 Q. And in earlier testimony, you've said</p>	<p style="text-align: right;">Page 132</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: I do not know. 3 BY MR. SISNEROS: 4 Q. Okay, look at the minutes, the second 5 page of Exhibit Miller 1164, the Bates stamp ABT 6 52706. 7 A. Okay. 8 Q. And look under the heading that says 9 "Average Wholesale Price." Do you see that? 10 A. Yes. 11 Q. Okay, and the first bullet under that 12 heading reads as follows: 13 "Average wholesale price, AWP, is 14 generally based on the manufacturer's price plus 15 a markup of 15 to 20%. The AWP is documented in 16 the Red Book, Blue Book and Medi-Span book and is 17 used by Medicare, Medicaid and commercial 18 insurance carriers to determine reimbursement 19 levels. There is a consensus that the AWP is 20 artificial and that actual acquisition cost would 21 be better. However, it is unclear whether actual 22 acquisition cost can be determined."</p>
<p style="text-align: right;">Page 131</p> <p>1 that you folks met only every four to six weeks, 2 something like that, correct? 3 A. Correct. 4 Q. So when Mr. Rieger is writing to the 5 Medicare Working Group on January the 29th, 1997, 6 and in it -- in that memo, he says, "Attached are 7 the minutes from the last meeting based on the 8 notes that Jim and I took," -- 9 A. Ah, okay. 10 Q. -- chances are that the minutes of 11 January 21st, 1997 are minutes that you and Mr. 12 Rieger took, correct? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: That's what it says. 15 BY MR. SISNEROS: 16 Q. And it's a meeting that you would have 17 attended, correct? 18 A. I cannot testify to that. 19 Q. But based upon Mr. Rieger's memo and 20 the dates of his memo and the dates of the 21 minutes, would it be reasonable that you did 22 attend?</p>	<p style="text-align: right;">Page 133</p> <p>1 Did I read that correctly? 2 A. As stated. 3 Q. Okay. Do you remember earlier I asked 4 you some questions about whether you had veto 5 power over an agenda? 6 A. Yes, sir. 7 Q. With regard to the minutes, before they 8 were disseminated, would you review them? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: I may or may not. 11 BY MR. SISNEROS: 12 Q. Now, do you -- do you -- do you have 13 any recollection at any of these Medicare Working 14 Group meetings having a discussion of average 15 wholesale price? 16 A. As it relates to what? 17 Q. In any context. 18 A. Well, if we disseminated these Pink 19 Sheets and these other articles, there would have 20 been some discussion. 21 Q. Well, with respect to that heading, 22 "Average Wholesale Price" in the minutes of</p>

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<p style="text-align: right;">Page 134</p> <p>1 1/21/97 and that first bullet point, had you ever 2 heard that average wholesale price was generally 3 based on the manufacturer's price plus a markup 4 of 15 to 20%?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: I don't know where -- I 7 mean if I look at my handwritten note, it says 8 "acquisition cost." This says "manufacturer's 9 price."</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. That's correct. In your way of 12 thinking, is -- are those two -- are those two 13 different measures?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. Explain the difference between one and 18 the other.</p> <p>19 A. You could define acquisition cost to 20 include the marketing, selling, R &amp; D costs of 21 the company.</p> <p>22 Q. Okay, and how is that?</p>	<p style="text-align: right;">Page 136</p> <p>1 of that first bullet point under "Average 2 Wholesale Price."</p> <p>3 "The AWP is documented in Red Book, 4 Blue Book and Medi-Span book and is used by 5 Medicare Medicaid and commercial insurance 6 carriers to determine reimbursement levels."</p> <p>7 As far as you know, is that statement 8 accurate?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: I'm not qualified to 11 answer. I don't know.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. Were you aware that AWP was used to 14 reimburse third-party payers?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: I cannot define in what 17 circumstances it would have been used or not 18 used.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. Well, at the time that you were given 21 the task of putting together this Working Group 22 meeting, you were involved in discussions of reim</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Which not -- which is not the 2 manufacturer's price.</p> <p>3 Q. What is the manufacturer's price?</p> <p>4 A. The manufacturer's price is -- is it 5 list price, is it -- what is it?</p> <p>6 Q. Basically, if I understand you 7 correctly -- and you correct me if I'm wrong, but 8 the way I understand this, you're saying that 9 acquisition cost would be the manufacturer's 10 price plus a markup for research and development 11 and other associated costs?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 BY MR. SISNEROS:</p> <p>14 Q. Or am I wrong? Did I understand you 15 incorrectly?</p> <p>16 A. Well, I think "manufacturer's price" 17 needs to be defined.</p> <p>18 Q. Okay, so you're saying you don't know 19 what "manufacturer's price" is?</p> <p>20 A. No. As used in this sentence, I do not 21 know.</p> <p>22 Q. Okay, let's look at the second sentence</p>	<p style="text-align: right;">Page 137</p> <p>1 -- as you call it, coverage to third-party 2 payers, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Did you have a basic understanding how 5 they were reimbursed or how they were covered?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: You have to define "basic 8 understanding."</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. Well, what understanding did you have 11 on how third-party payers were covered?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: Let's take Medicare.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. Okay.</p> <p>16 A. I knew that drugs not administered in 17 the physician's office were not covered under 18 Medicare at that time.</p> <p>19 Q. All right, how about drugs that were 20 administered in the physician's office?</p> <p>21 A. I knew they were reimbursed.</p> <p>22 Q. How?</p>

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<p>1     A. Either under the federal program, 2 Medicare, or sometimes under the state programs, 3 Medicaid.</p> <p>4     Q. Did you know by what method they were 5 reimbursed?</p> <p>6     MS. TABACCHI: Object to the form.</p> <p>7     THE WITNESS: I did not know how the 8 prices were set. I was never involved in that.</p> <p>9     BY MR. SISNEROS:</p> <p>10    Q. No, no, no. I'm -- I don't understand 11 what you mean "how the prices were set." What do 12 you mean "how the prices were set"?</p> <p>13    A. I don't know how a division obtained a 14 price for its products from Medicare.</p> <p>15    Q. I'm not asking that.</p> <p>16    A. Okay, fine.</p> <p>17    Q. I don't want to know how a division 18 determined its price. All I want to know is were 19 you -- well, were you aware that AWP was a 20 numerical value?</p> <p>21    MS. TABACCHI: Object to the form.</p> <p>22    THE WITNESS: I know AWP is a numerical</p>	<p>1     Q. Okay, were you aware that the Medicare, 2 Medicaid and commercial insurance carriers used 3 AWP to set their reimbursement levels?</p> <p>4     MS. TABACCHI: Object to the form.</p> <p>5     THE WITNESS: "Medicare allowable 6 equals AWP," I wrote it down. Somebody told me 7 that.</p> <p>8     BY MR. SISNEROS:</p> <p>9     Q. So you were aware of that?</p> <p>10    MS. TABACCHI: Object to the form.</p> <p>11    THE WITNESS: Yes.</p> <p>12    BY MR. SISNEROS:</p> <p>13    Q. All right, let's go to the second 14 bullet under "Average Wholesale Price." Let me 15 read it into the record.</p> <p>16    "Medicare pays 80% of the AWP, which 17 basically covers the provider's cost, and the 18 provider generally bills the other 20% of the AWP 19 directly to the patient or Medigap carrier. The 20 latter is essentially the provider's profit."</p> <p>21    Did I read that correctly?</p> <p>22    A. That's what it states.</p>
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<p>1 value, yes.</p> <p>2     BY MR. SISNEROS:</p> <p>3     Q. Did you know that this value was 4 published in Red Book, Blue Book and Medi-Span?</p> <p>5     MS. TABACCHI: Object to the form.</p> <p>6     THE WITNESS: I have never seen any one 7 of those three documents.</p> <p>8     BY MR. SISNEROS:</p> <p>9     Q. Okay, and I can appreciate you've never 10 seen it, but were you aware that those values 11 that are called "AWP" were published in these 12 compendia?</p> <p>13    MS. TABACCHI: Object to the form.</p> <p>14    THE WITNESS: I have heard of Red Book. 15 I have never heard of Blue Book or Medi-Span.</p> <p>16    BY MR. SISNEROS:</p> <p>17    Q. Okay, we know you've heard of Red Book. 18 Were you aware that AWP values were being 19 published in Red Book?</p> <p>20    A. Yes.</p> <p>21    MS. TABACCHI: Object to the form.</p> <p>22    BY MR. SISNEROS:</p>	<p>1     Q. Okay. And is it accurate to say that 2 what that paragraph is saying, that the 3 provider's cost of product is 80% of the AWP 4 value?</p> <p>5     MS. TABACCHI: Object to the form.</p> <p>6     THE WITNESS: That is not accurate.</p> <p>7     BY MR. SISNEROS:</p> <p>8     Q. It is not accurate?</p> <p>9     A. No.</p> <p>10    Q. Well, look at that first part of the 11 sentence. "Medicare pays 80% of the AWP, which 12 basically covers the provider's costs," what does 13 that mean?</p> <p>14    A. That could have been taken out of a 15 Pink Sheet. I don't know where that came from.</p> <p>16    Q. So you believe that part is inaccurate?</p> <p>17    MS. TABACCHI: Object to the form.</p> <p>18    THE WITNESS: Oh, do I object to the --</p> <p>19    the first part, "Medicare pays 80% of the AWP"?</p> <p>20    MR. SISNEROS: No, no.</p> <p>21    THE WITNESS: No, I do not object to 22 that.</p>

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<p style="text-align: right;">Page 142</p> <p>1 BY MR. SISNEROS:  2 Q. No, no, no, that's -- I'm not talking  3 about that. What I'm asking is -- let me read --  4 let me read the first part of that sentence.  5 "Medicare pays 80% of the AWP, which  6 basically covers the provider's cost?" Do you  7 see that?  8 A. Yes, as stated.  9 Q. Okay. I read that as saying that that  10 80% of AWP is what the -- is the provider's cost  11 for the product. Is that inaccurate?  12 MS. TABACCHI: Object to the form.  13 THE WITNESS: I do not know.  14 MR. SISNEROS: Okay.  15 MR. SOFFER: Counsel, why don't we take  16 this time to break for lunch? It's already noon.  17 MR. SISNEROS: Well, can I do the last  18 bullet point under that heading? I think I --  19 I'll be done with at least that little section.  20 Is that all right?  21 MR. SOFFER: Yes.  22 MR. SISNEROS: Okay.</p>	<p style="text-align: right;">Page 144</p> <p>1 A. I'm not sure the pharmaceutical  2 industry would agree with the IG report.  3 Q. Well, are you talking about Abbott?  4 MS. TABACCHI: Object to the form.  5 THE WITNESS: I'm talking generalities.  6 BY MR. SISNEROS:  7 Q. Okay. All right, fine. You -- so, in  8 other words, what you're saying is -- is that you  9 don't agree with the IG's report, and the I --  10 what the IG is talking about is not a problem,  11 just a perceived problem? Is that what you're  12 saying?  13 MS. TABACCHI: Object to the form.  14 THE WITNESS: I'm not qualified to  15 answer that.  16 BY MR. SISNEROS:  17 Q. Well, then what do you mean by the word  18 "perception"?  19 MS. TABACCHI: Object to the form.  20 THE WITNESS: There was not agreement  21 between the suppliers and the IG that the prices  22 were overstated.</p>
<p style="text-align: right;">Page 143</p> <p>1 BY MR. SISNEROS:  2 Q. All right, let's look at the last  3 paragraph of that bullet point of "Average  4 Wholesale Price," and I'll read it for the  5 record.  6 "A problem with current AWP system is  7 the perception per the Inspector General's report  8 that prices are too high. Specifically, it is  9 believed that the brand named drugs are 18%  10 overpriced and generic drugs are 40% overpriced."  11 Did I read that correctly?  12 A. As stated.  13 Q. Now, from Mr. Rieger's earlier memo,  14 the first page of this exhibit, he identifies you  15 and he as the writers of these -- of these  16 minutes; is that correct?  17 A. (Witness nodding.)  18 Q. Is that a yes?  19 A. Yes, sir.  20 Q. Okay. If you know, what do you mean by  21 the word "perception" when you're referencing the  22 IG's report?</p>	<p style="text-align: right;">Page 145</p> <p>1 BY MR. SISNEROS:  2 Q. And who -- is Abbott a supplier?  3 A. Yes.  4 MS. TABACCHI: Object to the form.  5 BY MR. SISNEROS:  6 Q. Okay, so what you're saying is Abbott  7 had a disagreement with the conclusions drawn by  8 the IG?  9 MS. TABACCHI: Object to the form,  10 asked and answered.  11 BY MR. SISNEROS:  12 Q. Yes?  13 MR. SOFFER: If you're able to answer,  14 you can answer it.  15 MR. HOFFMAN: You can answer it.  16 THE WITNESS: Yes.  17 BY MR. SISNEROS:  18 Q. How were you aware of that  19 disagreement?  20 MS. TABACCHI: Object to the form.  21 THE WITNESS: How am I aware of this  22 disagreement?</p>

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<p style="text-align: right;">Page 146</p> <p>1 BY MR. SISNEROS:  2 Q. Well, strike it.  3 How did you know there was a  4 disagreement --  5 A. How do I know?  6 MS. TABACCHI: Object to the form.  7 BY MR. SISNEROS:  8 Q. (Continuing) -- between Abbott and what  9 you believe is the IG's perception of a problem  10 here?  11 MS. TABACCHI: Object to the form.  12 THE WITNESS: Abbott would believe that  13 the IG did not have an accurate representation of  14 the total cost.  15 BY MR. SISNEROS:  16 Q. Where did you get that information?  17 A. Abbott.  18 Q. Who at Abbott told you that?  19 A. I do not recall.  20 Q. Do you recall if that information came  21 from within the Medicare Working Group or from  22 someone further up the chain from you?</p>	<p style="text-align: right;">Page 148</p> <p>1 A F T E R N O O N S E S S I O N  2  3 THE VIDEOGRAPHER: We are back on the  4 record at 1:00 p.m. with the start of Tape No. 3.  5 MR. SISNEROS: Good afternoon, Mr.  6 Miller.  7 THE WITNESS: Good afternoon.  8  9 C O N T I N U I N G D I R E C T E X A M I N A T I O N  10 BY MR. SISNEROS:  11 Q. Back to Exhibit Miller 1164. Are you  12 there?  13 A. Exhibit Miller 1164, yes, sir.  14 Q. Okay. And let's go to the second page  15 of Exhibit Miller 1164, ABT 52706. Are you  16 there?  17 A. Yes, sir.  18 Q. All right, when we broke for lunch, I  19 had asked you questions regarding the three  20 bullets under the item that -- in bold there  21 called "Average Wholesale Price." Do you  22 remember?</p>
<p style="text-align: right;">Page 147</p> <p>1 MS. TABACCHI: Object to the form.  2 THE WITNESS: I do not recall.  3 MR. SISNEROS: All right.  4 Okay, let's break for lunch.  5 THE VIDEOGRAPHER: We are off the  6 record at 12:07 p.m. with the end of Tape No. 2.  7 (Recess taken.)  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Yes, sir.  2 Q. And regarding the last bullet under  3 "Average Wholesale Price" where it's mentioned  4 that -- that there is a -- that -- well, let me  5 read it to you.  6 This is what it says: "A problem with  7 the current AWP system is the perception per the  8 Inspector General's report that prices are too  9 high. Specifically, it is believed that brand  10 name drugs are 18% overpriced and generic drugs  11 are 40% overpriced."  12 Did I read that correctly?  13 A. Yes, that's as stated.  14 Q. Okay. And you testified earlier that  15 Abbott disagreed with the IG reports; is that  16 correct?  17 MS. TABACCHI: Object to the form.  18 THE WITNESS: I cannot speak for  19 Abbott.  20 BY MR. SISNEROS:  21 Q. Well, that's what you said.  22 A. It's my perception that Abbott didn't</p>

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1 agree.	1 BY MR. SISNEROS:
2 Q. Okay. Well, how about you? Did you	2 Q. Why not?
3 disagree with the IG's report?	3 MS. TABACCHI: Object to the form.
4 A. I had no access to the detail of their	4 MR. SOFFER: You can answer only if you
5 report.	5 can.
6 Q. But this was a matter of -- I believe	6 THE WITNESS: Accounting systems deal -
7 that you testified earlier that you thought that	7 - I mean that's not a question that is normally
8 the IG didn't get full and accurate information.	8 asked of an accounting system.
9 I believe that was your testimony. Am I --	9 BY MR. SISNEROS:
10 that right?	10 Q. Well, where would the OIG get the full
11 MS. TABACCHI: Object to the form.	11 and accurate information they required for their
12 THE WITNESS: I believe the IG would	12 report?
13 have difficulty getting that.	13 MS. TABACCHI: Object to the form.
14 BY MR. SISNEROS:	14 THE WITNESS: I have no access to what
15 Q. Why is that?	15 they did.
16 MS. TABACCHI: Object to the form.	16 BY MR. SISNEROS:
17 THE WITNESS: Getting a complete total	17 Q. Well, why -- why do you have a sense
18 cost picture on anything is difficult.	18 that their report then did not have the full and
19 BY MR. SISNEROS:	19 accurate information?
20 Q. Why?	20 MS. TABACCHI: Object to the form.
21 A. Accounting systems are not built that	21 BY MR. SISNEROS:
22 way.	22 Q. Well, let me ask it this way. What is
1 Q. You know, I'm sorry, I don't follow.	1 your basis for saying that the findings of the
2 The OIG's -- Office of Investigative General,	2 OIG report do not reflect full and accurate
3 when you said earlier you thought they did not	3 information?
4 have full and accurate information, what	4 MS. TABACCHI: Object to the form.
5 information were you referring to that they did	5 THE WITNESS: I've been asked that same
6 not have?	6 question by my management at times and found it
7 MS. TABACCHI: Object to the form.	7 very difficult to answer.
8 THE WITNESS: Either acquisition cost	8 BY MR. SISNEROS:
9 or actual cost.	9 Q. Who asked you? What management asked
10 BY MR. SISNEROS:	10 you?
11 Q. And when you say "actual cost," you're	11 A. Various people I worked for over the
12 referencing Abbott's actual cost for product?	12 years.
13 MS. TABACCHI: Object to the form.	13 Q. Who?
14 THE WITNESS: I'm talking in general	14 A. I cannot recall a specific name.
15 about the industry.	15 Q. Your supervisors?
16 BY MR. SISNEROS:	16 A. Yes.
17 Q. Why would they have difficulty getting	17 Q. Was that asked -- question asked of you
18 actual cost?	18 when you were -- first entered the corporate
19 MS. TABACCHI: Object to the form.	19 level?
20 THE WITNESS: I already answered the	20 MS. TABACCHI: Object to the form.
21 question. Accounting systems do not readily	21 THE WITNESS: No.
22 provide that data.	22 BY MR. SISNEROS:

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<p>1 Q. When you were asked by management, what 2 was your answer?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: I gave them the same 5 answer I gave you.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Yeah. Which is?</p> <p>8 A. It's very difficult to do; it's not an 9 answer an accounting system will readily provide.</p> <p>10 Q. Okay, and what you're saying is the 11 pricing information they did not have was 12 acquisition cost?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. Correct?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I do not know what the 18 OIG had.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. No, I'm asking you -- I think you 21 testified earlier -- you identified two pieces of 22 information that you believe the OIG's report was</p>	<p>1 BY MR. SISNEROS: 2 Q. "The payer" being Medicare, Medicaid or 3 a third-party payer? 4 A. Yes. 5 Q. What amount they would have reimbursed 6 the provider? 7 A. Yes. 8 MS. TABACCHI: Object to the form.</p> <p>9 BY MR. SISNEROS: 10 Q. All right, and then the -- why would it 11 be difficult for the Office of Investigator 12 General to have obtained that information? 13 MR. SOFFER: Objection. 14 MS. TABACCHI: Object to the form. 15 MR. SOFFER: If you can answer, you 16 may. 17 THE WITNESS: There are product -- 18 there are prices for products, there are fees for 19 services, there are rebates. There are all kinds 20 of cost that go along with these products. I 21 have no idea how they were bundled or not bundled 22 or provided to the payers.</p>
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<p>1 not accurate in, in acquisition cost and in 2 industry costs or costs to the manufacturer. Am 3 I right? Is that what you said?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. And in the -- in the -- when you say 8 "acquisition cost," you're talking about the 9 acquisition cost of the provider, the medical 10 provider?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I have no knowledge of 13 what the providers submitted to Medicare or 14 Medicaid for a product.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. That's not what I asked. What I asked 17 was whose acquisition costs are you referencing?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: What --</p> <p>20 MR. SOFFER: You can answer.</p> <p>21 THE WITNESS: What the payer would have 22 seen.</p>	<p>1 BY MR. SISNEROS: 2 Q. Is that -- is that information secret 3 information? 4 A. No. 5 MS. TABACCHI: Object to the form.</p> <p>6 BY MR. SISNEROS: 7 Q. And then I think that the second item 8 that you identified as potentially inaccurate 9 with respect to the OIG's report would be I think 10 you said manufacturer's cost; is that correct? 11 A. I do not recall the exact term. 12 Q. Well, what term would you use? 13 A. Let's stay with manufacturer's cost. 14 Q. And is that value, is that number -- 15 would that be secret? 16 A. It's proprietary within the company. 17 Q. So that's information that the company 18 -- that the industry does not disclose? 19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: Disclose? To whom? 21 BY MR. SISNEROS: 22 Q. Publicly.</p>

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<p style="text-align: right;">Page 158</p> <p>1 A. Yes, we do not disclose publicly.    2 Q. Do you disclose it to the government?    3 MS. TABACCHI: Object to the form.    4 THE WITNESS: Only in an IRS tax suit.    5 BY MR. SISNEROS:    6 Q. When the IRS would be suing Abbott?    7 A. Yeah.    8 MS. TABACCHI: Object to the form.    9 BY MR. SISNEROS:    10 Q. All right, did -- to your knowledge,    11 was the -- these disagreements that folks within    12 Abbott had with the OIG's report, was that ever    13 communicated to the government?    14 MS. TABACCHI: Object to the form.    15 THE WITNESS: I'm not qualified to    16 answer.    17 BY MR. SISNEROS:    18 Q. I'm sorry, I don't know what that    19 means. I mean either you know or you don't.    20 A. I don't know.    21 Q. You don't know?    22 A. No.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Did you even consider that perhaps what    2 was being perceived as errors in this report    3 within the -- within the Medicap -- Medicare    4 Working Group be communicated to someone who    5 possibly could do something about these errors?    6 MS. TABACCHI: Object to the form.    7 THE WITNESS: No.    8 BY MR. SISNEROS:    9 Q. Was there discussion within the    10 Medicare Working Group to look at the findings of    11 the OIG's report?    12 MS. TABACCHI: Object to the form.    13 THE WITNESS: I do not -- no.    14 BY MR. SISNEROS:    15 Q. Was there any research that was    16 conducted by the Medicare Working Group to at    17 least evaluate the accuracy of the OIG's report?    18 A. No.    19 Q. Was there any activity at all to    20 prepare some type of challenge or rebuttal to the    21 OIG's report?    22 A. No, not that I'm aware of.</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Did you take any steps to see if your -    2 - the objections within this committee or    3 Medicare Working Group, did you take any steps to    4 see that any objections to that report were    5 communicated up the chain and possibly to the    6 government?    7 A. No.    8 MS. TABACCHI: Object to the form.    9 BY MR. SISNEROS:    10 Q. Why not?    11 A. In my opinion, there was no positive    12 outcome on that.    13 Q. What does that mean?    14 A. The OIG wasn't going to change its    15 report either way.    16 Q. Well, but if there was some    17 disagreement as to a perceived error in their    18 report, would it not have been beneficial to at    19 least get some dialogue going?    20 MS. TABACCHI: Object to the form.    21 THE WITNESS: I don't know.    22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Was the OIG's report ever discussed by    2 you with any of your supervisors up the chain of    3 command?    4 A. No.    5 Q. Could we look at Exhibit Miller 1162,    6 the members of the Medicare Working Group?    7 A. (Witness so doing).    8 Q. In terms of position of authority, who    9 is the highest ranking individual on that list?    10 MS. TABACCHI: Object to the form.    11 THE WITNESS: Cathy Babington.    12 BY MR. SISNEROS:    13 Q. And thereafter?    14 A. I'm not -- I don't know.    15 Q. Would that be you?    16 A. Maybe.    17 Q. All right, did Cathy Babington take a    18 leadership role in the Medicare Working Group?    19 MS. TABACCHI: Object to the form.    20 THE WITNESS: No.    21 BY MR. SISNEROS:    22 Q. Did you?</p>

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<p style="text-align: right;">Page 162</p> <p>1 MS. TABACCHI: Object to the form.    2 THE WITNESS: I was in charge of    3 coordinating the meetings.    4 BY MR. SISNEROS:    5 Q. Were there any -- anyone else in this -    6 - in this list of members of the Medicare Working    7 Group leaders in the group's work?    8 MS. TABACCHI: Object to the form.    9 MR. SOFFER: Objection, vague.    10 BY MR. SISNEROS:    11 Q. Did anyone else on that list take a    12 leadership role in the Medicare Working Group --    13 MS. TABACCHI: Same objection.    14 BY MR. SISNEROS:    15 Q. (Continuing) -- other than you?    16 MS. TABACCHI: Object to the form.    17 THE WITNESS: It's too broad to answer.    18 BY MR. SISNEROS:    19 Q. I -- I don't follow you. Within the    20 work -- within the activity of the Medicare    21 Working Group, other than your leadership, was    22 there anyone else recognized as a leader of this</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. All right, could you turn to the third    2 page of the minutes at ABT 52707?    3 A. Which document are we on?    4 Q. Oh, we're still on the same one,    5 Exhibit Miller 1164.    6 A. Okay.    7 Q. Third page, ABT 52707, third or fourth    8 page.    9 A. Okay.    10 Q. Under "Miscellaneous," in your minutes    11 you state in there -- excuse me. Under    12 "Miscellaneous," first bullet in your minutes,    13 you state the following:    14 "Due to Congress's inaction in 1996,    15 Laboratory Services will receive a 2.7 increase    16 in 1997. An alternate site will receive a 3.0    17 increase in 1997."    18 Do you see that?    19 MS. TABACCHI: Object to the form.    20 THE WITNESS: That's what -- I agree it    21 states that.    22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 163</p> <p>1 group?    2 MS. TABACCHI: Object to the form.    3 THE WITNESS: Each division is    4 responsible for its own marketing/selling    5 activities.    6 BY MR. SISNEROS:    7 Q. But I thought you testified those were    8 not discussed in the Medicare Working Group?    9 A. Right.    10 Q. Okay, I'm not talking about marketing    11 and selling of -- with different divisions. What    12 I am addressing my question to are to the    13 activities of the Medicare Working Group.    14 A. The Medicare Working Group was an    15 informational-sharing group.    16 Q. Who took the leadership role within the    17 context of that activity?    18 MS. TABACCHI: Object to the form.    19 THE WITNESS: My office called the    20 meetings for the informational-sharing    21 activities.    22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Did I read it accurately?    2 A. Yes, sir.    3 Q. When you say "alternate site," what do    4 you reference? What do you mean?    5 A. I'm not sure.    6 Q. Is there an alternate site unit within    7 the Home -- Hospital Products Division?    8 MS. TABACCHI: Object to the form.    9 THE WITNESS: That term was used to    10 describe non-hospital activities.    11 BY MR. SISNEROS:    12 Q. The "alternate site"?    13 A. Right.    14 Q. So are you referring to non-hospital    15 activities by the term "alternate site"?   16 A. I do not know, sir.    17 Q. And the 3% increase that you refer --    18 that you refer to in there, what is that?    19 MS. TABACCHI: Object to the form.    20 THE WITNESS: I do not know.    21 BY MR. SISNEROS:    22 Q. Okay. Let's go to the next highlighted</p>

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<p style="text-align: right;">Page 166</p> <p>1 area called "Next Steps."</p> <p>2       Are you there?</p> <p>3       A. Yes, sir.</p> <p>4       Q. With that first bullet point, let me</p> <p>5 read it into the record. "Obtain notice of</p> <p>6 inherent reasonableness document from Mike</p> <p>7 Tootell and distribute to the Medicare Working</p> <p>8 Group."</p> <p>9       Did I read that accurately?</p> <p>10      A. That's as stated.</p> <p>11      Q. What is "notice of inherent</p> <p>12 reasonableness"?</p> <p>13      A. I do not know.</p> <p>14      Q. All right, let's go to the next bullet</p> <p>15 point under "Next Steps."</p> <p>16      "Obtain list of drugs." Let me read it</p> <p>17 into the record. "Obtain list of drugs from John</p> <p>18 Campbell that comprise the 1.4 billion drug</p> <p>19 market, 900 million of which is projected to be</p> <p>20 Lupron and other drugs, and distribute to</p> <p>21 Medicare Working Group."</p> <p>22      Did I read that accurately?</p>	<p style="text-align: right;">Page 168</p> <p>1 significant?</p> <p>2       A. Well, a billion dollars is always</p> <p>3 significant.</p> <p>4       Q. So it is significant?</p> <p>5       A. Yes.</p> <p>6       Q. And why would you be trying to obtain</p> <p>7 lists of drugs that compromise -- that comp --</p> <p>8 that make up a significant drug market and</p> <p>9 distribute to the Medicare Working Group?</p> <p>10      MS. TABACCHI: Object to the form,</p> <p>11 asked and answered.</p> <p>12      THE WITNESS: I do not know.</p> <p>13      BY MR. SISNEROS:</p> <p>14      Q. All right, let's go back to the first</p> <p>15 page of Exhibit Miller 1164.</p> <p>16      A. (Witness so doing.)</p> <p>17      Q. Are you there --</p> <p>18      A. Um-hum.</p> <p>19      Q. -- at ABT 52705?</p> <p>20      A. Yes, sir.</p> <p>21      Q. And earlier, I asked you some questions</p> <p>22 regarding that first sentence, and I'll read it</p>
<p style="text-align: right;">Page 167</p> <p>1       A. That's as stated.</p> <p>2       Q. Okay, what -- who is John Campbell?</p> <p>3       A. I believe he worked at TAP. Yes.</p> <p>4       Q. And why -- why were you obtaining a</p> <p>5 list of drugs --</p> <p>6       MS. TABACCHI: Object to the form.</p> <p>7      BY MR. SISNEROS:</p> <p>8       Q. -- for the Medicare Working Group?</p> <p>9       A. I do not remember.</p> <p>10      Q. And the reference to 1.4 billion drug</p> <p>11 market in that one item, is that -- does that</p> <p>12 refer to Abbott's drug market?</p> <p>13      MS. TABACCHI: Object to the form.</p> <p>14      THE WITNESS: I do not know.</p> <p>15      BY MR. SISNEROS:</p> <p>16      Q. Would you agree that a 1.4 billion drug</p> <p>17 market is a significant drug market?</p> <p>18      MS. TABACCHI: Object to the form.</p> <p>19      THE WITNESS: There are many one</p> <p>20 billion dollar drug products.</p> <p>21      BY MR. SISNEROS:</p> <p>22      Q. So the -- your answer is, no, it's not</p>	<p style="text-align: right;">Page 169</p> <p>1 into the record again.</p> <p>2       "Since Medicare seems to be heating up</p> <p>3 in our" -- strike that.</p> <p>4       "Since Medicare seems to be heating up,</p> <p>5 our Working Group seems interested in continuing</p> <p>6 to meet and others are becoming interested in</p> <p>7 what we are doing. Jim and I would like to find</p> <p>8 a way to communicate outside our Working Group.</p> <p>9 To that end, we are thinking about documenting</p> <p>10 each of our Working Group meetings via minutes</p> <p>11 and using this as a communications tool."</p> <p>12      Did I read that accurately?</p> <p>13      A. That's as stated.</p> <p>14      Q. Okay, did -- did -- this is Mr.</p> <p>15 Rieger's memo, correct?</p> <p>16      A. Correct.</p> <p>17      Q. Did you have a sense that, back in</p> <p>18 January of '97, "Medicare seemed to be heating</p> <p>19 up," as Mr. Rieger says?</p> <p>20      MS. TABACCHI: Object to the form.</p> <p>21      THE WITNESS: I don't remember.</p> <p>22      BY MR. SISNEROS:</p>

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<p>1 Q. Earlier in your testimony, you  2 testified that when you first met with the --  3 with the Medicare Working Group, that some of the  4 folks that were present were asking, "Why am I  5 here?"  6 Do you recall that testimony?  7 A. Yes, sir.  8 Q. Then by January of '97, according to  9 Mr. Rieger's memo, he writes that, "Our Working  10 Group seems interested in continuing to meet."  11 Do you see that?  12 A. Yes, sir.  13 Q. Do you agree with that statement, that  14 there -- that the group was interested --  15 interested in continuing these meetings?  16 MS. TABACCHI: Object to the form.  17 THE WITNESS: Yes.  18 BY MR. SISNEROS:  19 Q. All right, in the last part of that  20 first sentence, Mr. Rieger writes, "Others are  21 becoming interested in what we are doing."  22 Would you agree with that?</p>	<p>1 A. I read it as a comma, okay?  2 Q. Okay. All right, then I'll put it back  3 in the record again.  4 THE WITNESS: Back in the record.  5 MR. SOFFER: We can agree to this,  6 right?  7 THE WITNESS: Compound, complex, run-on  8 sentence.  9 BY MR. SISNEROS:  10 Q. But you do agree as part of that  11 sentence that what's being communicated is that  12 others outside the Working Group are interested  13 in what you are doing within the Medicare Working  14 Group?  15 A. That's what it says.  16 Q. Okay. So it follows that the last part  17 of that sentence, "Jim and I would like to find a  18 way to communicate outside of our Working Group,"  19 that he is addressing the interests of others  20 outside of your group who have become interested  21 in your work?  22 MR. SOFFER: Objection.</p>
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<p>1 MS. TABACCHI: Object to the form.  2 THE WITNESS: I do not recall what  3 "others" mean in that context.  4 BY MR. SISNEROS:  5 Q. Well, the way I read his sentence is he  6 is -- "others" refers to others outside of your  7 Working Group. Do you read that sentence that  8 way?  9 A. It could be read that way, yes.  10 Q. Do you read it that way?  11 A. Yes.  12 Q. Then what follows is, "Jim and I would  13 like to find a way to communicate outside of our  14 Working Group." Correct? Did I read that  15 correctly?  16 A. That's part of the sentence, right.  17 Q. It is part of the sentence?  18 A. Right.  19 Q. Because I can't -- I can't determine  20 whether that's a comma or a period between the  21 words "doing" and "Jim."  22 Do you see that?</p>	<p>1 MS. TABACCHI: Object to the form,  2 asked and answered.  3 MR. SOFFER: Do you understand the  4 question?  5 THE WITNESS: (Witness nodding.)  6 MR. SOFFER: Do you need to hear it  7 again?  8 THE WITNESS: No.  9 I mean attendance was not limited at  10 the meetings. If you wanted to show up, you  11 could show -- anybody could show up.  12 BY MR. SISNEROS:  13 Q. Outside of the Medicare Working Group?  14 A. Sure.  15 Q. And did that happen?  16 A. People substituted for people who  17 couldn't make meetings, okay? So I mean if you  18 had an issue you wanted to talk about, you could  19 come to the meeting.  20 Q. So there were others outside of the  21 distribution list who attended your meetings?  22 A. If they attended the meetings, they</p>

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<p style="text-align: right;">Page 174</p> <p>1 would be on the documents.</p> <p>2 Q. Okay, that's -- I understand what you 3 said, but that wasn't my question. My question 4 was there were others outside the distribution 5 lists who attended the meetings?</p> <p>6 A. If you give me all the documents and 7 we'll cross reference them back to the members of 8 the Working Group, I can tell you whether other 9 people attended.</p> <p>10 Q. Is it your belief that they did?</p> <p>11 A. I -- I do not know.</p> <p>12 Q. Okay, well, then let's get back to that 13 first sentence.</p> <p>14 A. Okay.</p> <p>15 Q. Is it a fair -- is it reasonable to 16 believe that Mr. Rieger was communicating there 17 that they were trying -- that you two were trying 18 to find a way to communicate to others, other 19 than the ones that are listed in the distribution 20 list of the Medicare Working Group?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I don't know how to</p>	<p style="text-align: right;">Page 176</p> <p>1 THE WITNESS: That's paraphrase. I 2 would -- if there was an issue that I felt I 3 needed my boss's input, I would raise it to him.</p> <p>4 BY MR. SISNEROS:</p> <p>5 Q. In what manner?</p> <p>6 A. Either --</p> <p>7 MS. TABACCHI: Objection to form.</p> <p>8 THE WITNESS: This was an information- 9 sharing group. It was not a decision-making 10 group.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. Would some of that information have 13 been relevant to the decision makers?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: The decision makers were 16 in the divisions.</p> <p>17 BY MR. SISNEROS:</p> <p>18 Q. Would the information of the Medicare 19 Working Group been important information for the 20 decision makers within the divisions?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: If you add in that</p>
<p style="text-align: right;">Page 175</p> <p>1 answer that question. There was no -- the 2 minutes are the official discussion document, and 3 if those minutes were distributed to non-members 4 of the group, I would not have had a problem with 5 that.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Would -- well, let me ask it this way. 8 Could you have been considering distributing the 9 minutes to others outside the Medicare Working 10 Group?</p> <p>11 A. No.</p> <p>12 Q. You would not have considered sharing 13 this information with your supervisor?</p> <p>14 A. No.</p> <p>15 Q. Why not?</p> <p>16 A. If I needed to talk to my supervisor, 17 I'd go to his office and talk to him.</p> <p>18 Q. So you would discuss what was going on 19 with the Medicare Working Group, but just not in 20 written form?</p> <p>21 A. No, it --</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 177</p> <p>1 division, I would say yes.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. Okay. Now, isn't it possible when you 4 read that first sentence that it indicates it 5 possibly -- couldn't you have been considering 6 distributing the minutes outside of the Medicare 7 Working Group?</p> <p>8 MS. TABACCHI: Objection to form.</p> <p>9 MR. SOFFER: Objection.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. And you can remember that specifically?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. All right, and the last part of that 17 sentence, "Jim and I would like to find a way to 18 communicate outside of our Working Group," it is 19 your testimony that it's referencing 20 communicating within your -- within your Working 21 Group?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 178</p> <p>1        MR. SOFFER: Objection, asked and 2        answered. 3        BY MR. SISNEROS: 4        Q. Is that your testimony? 5        A. It is my -- to the best of my 6        knowledge, the minutes of these meetings were 7        only distributed to the members of the Working 8        Group. 9        Q. Okay, let me ask it this way. With 10      regard to the last part of that first sentence, 11      and I'll read that part, "Jim and I would like to 12      find a way to communicate outside of our Working 13      Group," it's your testimony that you did not want 14      to communicate what was going on with the 15      Medicare Working Group outside of the group; is 16      that right? 17        MS. TABACCHI: Object to the form. 18        THE WITNESS: I wanted the 19      communication of that group to go back through 20      the representatives of that group. 21        BY MR. SISNEROS: 22        Q. So you did want the information from</p>	<p style="text-align: right;">Page 180</p> <p>1        Q. Well, if you want -- if you want 2        Abbott's products to be reimbursed, you just get 3        them on the formulary for Medicare and state 4        Medicaid programs, don't you? 5        MS. TABACCHI: Object to the form. 6        THE WITNESS: I'm not qualified to 7        answer that. 8        BY MR. SISNEROS: 9        Q. Well, then how do you know if it's -- 10      that it's not reimbursed, it's not going to sell? 11        MS. TABACCHI: Object to the form. 12        THE WITNESS: I have a -- personal 13      experience. 14        BY MR. SISNEROS: 15        Q. Well, let me ask this. Who does 16      Medicaid Medicare and third-party payers 17      reimburse when they pay for beneficiaries under 18      their plan? 19        MS. TABACCHI: Object to the form. 20        THE WITNESS: I don't know all of -- 21        BY MR. SISNEROS: 22        Q. Do they reimburse Abbott?</p>
<p style="text-align: right;">Page 179</p> <p>1        the Medicaid -- Medicare Working Group to be 2        disseminated to others outside the group through 3        the division representatives on the Medi -- 4        A. No. 5        Q. No? 6        A. That was not the intent. I didn't say 7        -- I mean these were not stamped "do not 8        distribute," "do not make copies," but we never 9        had -- I think what Mr. -- I'm guessing -- see, 10      I'm guessing what Rich meant. I'm not -- I can't 11      do that. 12        Q. All right. All right, with respect to 13      the Medicare Working Group's discussion of how 14      third-party payers like Medicare and Medicaid and 15      third-party payers, what they reimbursed, why 16      would Abbott even care? 17        MS. TABACCHI: Objection, form. 18        MR. SOFFER: Objection. 19        THE WITNESS: If a product is not 20      prescribe -- if a product is not reimbursed, it 21      is generally not prescribed. 22        BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 181</p> <p>1        A. No. 2        Q. How do you know that? 3        A. We don't sell directly to -- well, I 4        don't know. I'm probably not qualified to answer 5        that. 6        Q. Why do you say that? 7        A. I -- I don't believe that Medicare or 8        Medicaid is a direct customer of Abbott, but I'm 9        not a hundred percent sure of that. 10        Q. I see. So -- so the reimbursement for 11      Medicaid/Medicare goes -- goes to the medical 12      provider that provides a service to the Medicaid 13      or Medicare beneficiary? 14        MS. TABACCHI: Object to the form. 15        MR. SOFFER: Objection. 16        You may answer if you know the answer 17      to the question. 18        BY MR. SISNEROS: 19        Q. Do you have a health plan at Abbott? 20        Did you have a health plan at Abbott? 21        A. Yes. 22        Q. When you went to get a prescription,</p>

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<p style="text-align: right;">Page 182</p> <p>1 did you pay for it?    2 MS. TABACCHI: Object to the form.    3 THE WITNESS: It had a deductible and a    4 co-pay.    5 BY MR. SISNEROS:    6 Q. And you paid the co-pay?    7 A. And the deductible, yes.    8 Q. And who paid the balance?    9 MS. TABACCHI: Object to the form.    10 THE WITNESS: Abbott.    11 BY MR. SISNEROS:    12 Q. Abbott. So who would Abbott pay?    13 MS. TABACCHI: Object to the form.    14 THE WITNESS: Abbott had a what I would    15 call -- characterize as a pharmacy benefit    16 manager who did that for Abbott.    17 BY MR. SISNEROS:    18 Q. All right, so whoever filled your    19 prescription got the pay -- got the    20 reimbursement?    21 A. (Witness nodding.)    22 Q. Is that accurate?</p>	<p style="text-align: right;">Page 184</p> <p>1 which you wrote, correct?    2 A. Correct.    3 Q. And in it, you -- you're -- the first    4 bullet point, you're talking about changing    5 reimbursement price for drugs administered in a    6 physician's office from AWP. Do you see that?    7 A. Correct.    8 Q. You've testified that you --    9 reimbursement -- that the money we're talking    10 about was -- that reimbursement wasn't going to    11 go to Abbott, correct?    12 A. Correct.    13 Q. All right. In the context of    14 reimbursement for drugs administered in a    15 physician's office, who would be receiving the    16 reimbursement, Mr. Miller?    17 MS. TABACCHI: Object to the form.    18 THE WITNESS: My assump -- I mean I --    19 I've never personally done this. I don't know.    20 I'm not qualified to answer. My assumption is    21 the doctor got paid.    22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 183</p> <p>1 A. That's fine.    2 MS. TABACCHI: Object to the form.    3 BY MR. SISNEROS:    4 Q. Okay, within the context of Medicaid    5 and Medicare reimbursement on pharmaceutical    6 products, reimbursement would go to the pharmacy    7 that filled the prescription for the Medicaid or    8 Medicare beneficiary, correct?    9 MS. TABACCHI: Object to the form.    10 THE WITNESS: I do not know.    11 BY MR. SISNEROS:    12 Q. You do not know?    13 A. No.    14 Q. All right, can you look at Exhibit 163?    15 A. Exhibit Miller 1163?    16 Q. Yes. And we will go to I guess that    17 would be the second page, ABT 52841.    18 A. Okay.    19 Q. You see that?    20 A. Yes, sir.    21 Q. All right, and this is -- this is    22 minutes of March -- of March 6th, 1997 minutes,</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Okay. Would your assumption be also    2 that a pharmacist would get paid for drugs that    3 he is dispensing to a Medicaid or Medicare    4 beneficiary by the Medicaid or Medicare program?    5 MS. TABACCHI: Object to the form.    6 MR. SOFFER: Objection.    7 THE WITNESS: I don't know.    8 BY MR. SISNEROS:    9 Q. How does -- how does a doctor or a    10 pharmacist get paid for Abbott products that they    11 -- that are prescribed out to Medicaid or    12 Medicare beneficiaries?    13 MS. TABACCHI: Object to the form. I'm    14 going to object to this entire line of    15 questioning as calling for speculation from the    16 witness that has no experience in this area.    17 We've spent hours on this.    18 I'm hopeful that the parties plan to    19 finish the deposition today, but let me note now    20 my objection to continuing to ask these type of    21 questions of a witness that clearly are beyond    22 his experience.</p>

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<p style="text-align: right;">Page 186</p> <p>1 BY MR. SISNEROS:  2 Q. Can you answer the question?  3 A. No. I don't know.  4 Q. Okay. But one thing you are certain of  5 is that reimbursement was not -- wasn't anything  6 that was going to go into Abbott's pocket, right?  7 MS. TABACCHI: Object to the form.  8 MR. SOFFER: Objection.  9 THE WITNESS: As I stated earlier, I do  10 not believe Medicare or Medicaid is a direct  11 customer of Abbott.  12 BY MR. SISNEROS:  13 Q. Okay, so in your thinking,  14 reimbursement is tied to the direct customer of  15 Medicare and Medicaid?  16 MS. TABACCHI: Object to the form.  17 Can the reporter please read -- repeat  18 that question?  19 THE REPORTER: Sure.  20 (Record read.)  21 MS. TABACCHI: Object to the form.  22 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 A. It could have been anytime during that  2 tenure.  3 Q. Okay, that's fine. And in the second  4 line you've got in there, "Medicare pays  5 physician 80% of Medicare allowable." Is that  6 correct?  7 A. That's what I wrote.  8 Q. And you've -- and you've identified in  9 the earlier line that "Medicare equals AWP,"  10 correct?  11 A. That's what I wrote.  12 MS. TABACCHI: Object to the form.  13 BY MR. SISNEROS:  14 Q. And so at one point or another, you  15 would have had information that the Medicare  16 program provides a medical provider  17 reimbursement?  18 MS. TABACCHI: Object to the form.  19 THE WITNESS: I will repeat myself. I  20 do not know the context in which I got this  21 information or passed it on to Rich.  22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 187</p> <p>1 BY MR. SISNEROS:  2 Q. All right, would you look at Exhibit  3 Miller 1165, a one-page handwritten note?  4 A. Um-hum.  5 Q. At some -- if I recall correctly, this  6 is something that you -- that you -- that you  7 sent to Mr. Rieger; is that true?  8 A. That is -- that is accurate.  9 Q. And there is a piece of information  10 that you really don't recall where you got it,  11 but at one point or another, it was in your hand?  12 A. Correct.  13 Q. And because it -- because Mr. Rieger's  14 name is there, it would have been at a time point  15 you were in your first corporate level position,  16 correct?  17 A. I can't put a time frame on it.  18 Q. Well, did Mr. Rieger work for you in  19 any capacity outside of your corporate level  20 positions?  21 A. No.  22 Q. So --</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. But that piece of information  2 identifies for you that Medicare pays the  3 physician 80% of the Medicare allowable?  4 MS. TABACCHI: Object to the form.  5 BY MR. SISNEROS:  6 Q. Isn't that what you wrote?  7 A. But I don't know in what context it was  8 written.  9 Q. I understand that, but it indicates to  10 you that Medicare pays a physician?  11 A. In some instance.  12 Q. Okay. All right, now, let's -- I want  13 to go back to an area earlier, and I -- I may  14 have misunderstood your answer, so I need you to  15 clarify it for me.  16 And that is I asked you some questions  17 why pricing was not discussed in the Medicare  18 Working Group. Do you recall?  19 A. Yes, sir.  20 Q. And at one point, you said there was  21 some issue of legality. You recall that?  22 A. That -- yes.</p>

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<p>1 Q. And the question that I had followed up  2 with and your response, which I may have  3 misunderstood, concerns whether any legal advice  4 was received by the Medicare Working Group.  5 So my question to you is did the  6 Medicare Working Group receive legal advice from  7 either Abbott's counsel or outside counsel? Yes  8 or no question.</p> <p>9 MS. TABACCHI: Object to the form.  10 I'm going to caution -- I'm also going  11 to caution the witness not to reveal the  12 substance of any communications with counsel.  13 BY MR. SISNEROS:  14 Q. And I'm not asking for the substance. I  15 just want to know yes or no.  16 A. No.  17 Q. On what basis then do you say that  18 there might have been an issue of legality?  19 MS. TABACCHI: Object to the form.  20 Again, I will caution the witness not to reveal  21 the substance of any communications with counsel.  22 MR. SISNEROS: And I'm only going here</p>	<p>1 THE WITNESS: I don't know. We were  2 just trained never to do it.  3 BY MR. SISNEROS:  4 Q. And, again, who are the multiple  5 divisions?  6 A. The multiple divisions are the  7 Pharmaceutical Division, the Ross Division,  8 Hospital Products Division, the Abbott  9 Diagnostics Division.  10 Q. The folks that were representative --  11 represented on the Medicare Working Group?  12 A. Yes.  13 Q. Okay.  14 MS. TABACCHI: Let me know when it's a  15 good time to take a few minutes.  16 MR. SISNEROS: How much time?  17 THE VIDEOGRAPHER: We've got about a  18 half hour left on this tape.  19 MR. SISNEROS: Can it wait? We can  20 take a break right now.  21 MR. SOFFER: I won't be able to wait a  22 half hour.</p>
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<p>1 because --  2 MS. TABACCHI: I'm just reminding the  3 witness.  4 MR. SISNEROS: Okay, good. Yeah, good,  5 good.  6 MS. TABACCHI: Because I think you're  7 mixing apples and oranges, really.  8 MR. SISNEROS: All right, well --  9 THE WITNESS: My training was never to  10 discuss pricing in a room with multiple  11 divisions.  12 BY MR. SISNEROS:  13 Q. Where did -- where did -- where did you  14 receive this training?  15 A. My --  16 Q. At the corporate level?  17 A. No. Throughout my career. We just  18 never talked prices.  19 Q. And, again, why is that?  20 A. (Gesturing.)  21 MS. TABACCHI: Object to the form and -  22 -</p>	<p>1 MS. TABACCHI: Sorry, my Starbucks cup  2 is empty.  3 THE VIDEOGRAPHER: We are off the  4 record at 1:47 p.m.  5 (Recess taken.)  6 (Exhibit Miller 1166 was marked  7 for ID)  8 THE VIDEOGRAPHER: We are back on the  9 record at 1:59 p.m.  10 BY MR. SISNEROS:  11 Q. All right, Mr. Miller, I'm handing you  12 what I've marked and identified as Exhibit 166 to  13 your deposition.  14 MS. TABACCHI: Is that Exhibit Miller  15 1166?  16 MR. SISNEROS: Yes.  17 BY MR. SISNEROS:  18 Q. Take a moment and review it, please,  19 and as just a housecleaning matter, you should  20 have three pages, Bates No. ABT 52901 through ABT  21 52903. Do you have them?  22 A. Yes, sir.</p>

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1	Q. Okay.	1	A. As stated.
2	A. (Witness reviewing document.)	2	Q. And Miss Sensibaugh works in Abbott's
3	Yes, sir.	3	Washington, D.C. office?
4	Q. You ready sir?	4	A. Yes, sir.
5	A. Yep.	5	Q. So at least in your review of these
6	Q. All right, the first page is a memo	6	minutes, it would be accurate to say that the
7	from Mr. Rieger dated April 23rd, 1997 to the	7	Medicare Working Group did at times discuss
8	Medicare Working Group attaching the Medicare	8	pending legislation regarding Medicare coverage?
9	Working Group meeting minutes' most recent	9	MS. TABACCHI: Object to the form.
10	meeting; is that correct?	10	THE WITNESS: As I've testified
11	A. As stated.	11	earlier, the Washington office kept the members
12	Q. As stated, okay. And the following	12	abreast of pending legislation.
13	page is -- or the following two pages, rather,	13	BY MR. SISNEROS:
14	are the actual minutes from the Medicare Working	14	Q. So the answer is yes to my question?
15	Group meeting of April 17th, 1997; is that right?	15	A. Yes.
16	A. As stated.	16	MR. SISNEROS: Okay.
17	Q. Okay, and do you recall whether you	17	(Exhibit Miller 1167 was marked
18	made this meeting or not?	18	for ID)
19	A. I do not recall.	19	BY MR. SISNEROS:
20	Q. Okay. And if you could turn to the --	20	Q. Mr. Miller, I am handing you what I --
21	to the last page under the section entitled	21	what has been marked and identified as Exhibit
22	"Diabetes," do you see that?	22	Miller 1167 to this deposition.
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1	A. Yes, sir.	1	Could you take a moment and review
2	Q. All right. And it has three bullet	2	those pages, please?
3	points discussing bill spending before the House	3	A. (Witness reviewing document).
4	of Representative regarding coverage of different	4	MS. TABACCHI: Thank you.
5	procedures or services by the Medicare program.	5	THE WITNESS: Yes, sir?
6	Is that accurate? Actually, strike that.	6	BY MR. SISNEROS:
7	Let me say there would -- under the	7	Q. All right, a little housekeeping first.
8	"Diabetes" heading, the third bullet, they're	8	I need you to confirm that the following Bates
9	talking about "a pending House bill regarding the	9	Numbers making up Exhibit Miller 1167, starting
10	Medicare coverage of diabetes outpatients self-	10	with ABT 533815, ABT 53172, ABT 53713?
11	management training services."	11	A. No, wait, wait. We have different
12	Do you see that, sir?	12	documents. I have 53315, 53316, 53317, 53318.
13	A. Yes, sir.	13	MS. TABACCHI: And this is why we do
14	Q. And then in the first bullet, there's	14	this.
15	some discussion about another House bill, but no	15	MR. SISNEROS: That's why we do it. Let
16	reference is made to Medicare there; is that	16	me see what you have.
17	correct?	17	THE WITNESS: (Tendering document).
18	A. That is correct.	18	MR. SISNEROS: Actually, I believe it's
19	Q. And then the second bullet discusses	19	the same -- we have the same document that was
20	Cindy Sensibaugh and Rich Rieger distributing	20	received twice from Abbott, and so it's going to
21	general office accounting material to the	21	have two different Bates Numbers, but let's clean
22	Medicare Working Group; is that right?	22	it up.

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<p>1        Can we go off the record a second?</p> <p>2        THE VIDEOGRAPHER: We are off the</p> <p>3 record at 2:08 p.m.</p> <p>4        (Recess taken.)</p> <p>5        THE VIDEOGRAPHER: We are back on the</p> <p>6 record at 2:10 p.m.</p> <p>7 BY MR. SISNEROS:</p> <p>8        Q. Mr. Miller, I have handed you what's</p> <p>9 been marked and identified as Exhibit Miller</p> <p>10 1167. Have you read it?</p> <p>11        A. Yes, sir.</p> <p>12        Q. All right, and the Bates stamps on the</p> <p>13 exhibit you have are ABT 53315, 53172 --</p> <p>14        MR. SOFFER: No.</p> <p>15        THE WITNESS: No.</p> <p>16 BY MR. SISNEROS:</p> <p>17        Q. 53316, excuse me. Right? 53316 is the</p> <p>18 second page of this?</p> <p>19        A. Yes, sir.</p> <p>20        Q. And the third page is 53317?</p> <p>21        A. Yes, sir.</p> <p>22        Q. And 53318, correct?</p>	<p>1        A. Yes.</p> <p>2        Q. Okay, and so one of the discussions or</p> <p>3 at least mention that would have been made in the</p> <p>4 Medicare Working Group was the American Medical</p> <p>5 Association's proposed Medicare reforms; is that</p> <p>6 right?</p> <p>7        MS. TABACCHI: Object to the form.</p> <p>8        I'm sorry, could you -- would you mind</p> <p>9 reading the question back to him?</p> <p>10        (Record read.)</p> <p>11        MS. TABACCHI: I object to the form.</p> <p>12        THE WITNESS: The memo was distributed,</p> <p>13 and there would have been -- well, I don't know.</p> <p>14 I mean I'm -- I'm assuming there was discussion.</p> <p>15 BY MR. SISNEROS:</p> <p>16        Q. Okay. But we do know from Exhibit</p> <p>17 Miller 1167 that the information that you passed</p> <p>18 on to the Medicare Working Group concerned the</p> <p>19 activity of the American Medical Association's</p> <p>20 ideas on Medicare?</p> <p>21        A. Yes.</p> <p>22        MS. TABACCHI: Object to the form.</p>
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<p>1        A. Correct.</p> <p>2        Q. Okay. And just so we'll identify them</p> <p>3 for the record, what it is is a memo from you to</p> <p>4 what appears the Medicare Working Group dated</p> <p>5 November 21st, 1996 relating to the "Monday's</p> <p>6 meeting, 11/25/96 on Medicare reform - Don</p> <p>7 Buell's comments." Is that right?</p> <p>8        A. Yes.</p> <p>9        Q. And the meeting that you're referencing</p> <p>10 in your memo of November 21st, 1996 references a</p> <p>11 Medicare Working Group meeting?</p> <p>12        A. Yes.</p> <p>13        Q. And attached to your memo is a memo</p> <p>14 from Don Buell, Director of Health, Economics and</p> <p>15 Policy, addressed to you dated November 21st,</p> <p>16 1996, giving a summary of the AMA/Industry Round</p> <p>17 Table Steering Committee; is that correct?</p> <p>18        A. Yes.</p> <p>19        Q. And essentially what your memo does is</p> <p>20 it distributes Mr. Buell's memo to you, and you</p> <p>21 redistribute it to the Medicare Working Group?</p> <p>22 That's what you did, right?</p>	<p>1        BY MR. SISNEROS:</p> <p>2        Q. And this is something you yourself</p> <p>3 brought up to the attention of the Medicare</p> <p>4 Working Group, correct?</p> <p>5        A. I distributed the document.</p> <p>6        Q. You brought it to their attention by</p> <p>7 distributing it, right?</p> <p>8        MS. TABACCHI: Object to the form.</p> <p>9        MR. SOFFER: Objection.</p> <p>10        THE WITNESS: I re --</p> <p>11        MS. TABACCHI: Is there a question</p> <p>12 pending? I'm sorry, what's the question that's</p> <p>13 pending?</p> <p>14 BY MR. SISNEROS:</p> <p>15        Q. Well, do you recall your testimony that</p> <p>16 the purpose of the Medicare Working Group was</p> <p>17 information sharing?</p> <p>18        A. (Witness nodding.)</p> <p>19        Q. Would you agree --</p> <p>20        MS. TABACCHI: Can I --</p> <p>21        MR. SOFFER: You have to answer --</p> <p>22        MS. TABACCHI: Mr. Miller, you need to</p>

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<p style="text-align: right;">Page 202</p> <p>1 answer audibly.    2 MR. SOFFER: -- audibly.    3 THE WITNESS: Oh, yes. Sorry.    4 BY MR. SISNEROS:    5 Q. Do you agree that your memo with the    6 ABA attachment is a step you took to share    7 information with the Medicare Working Group?    8 A. Yes.    9 MR. SISNEROS: All right.    10 (Exhibit Miller 1168 was marked    11 for ID)    12 BY MR. SISNEROS:    13 Q. All right, I'm handing to you what has    14 been marked and identified as Exhibit Miller 1168    15 to your deposition, and if you could take a few    16 moments and review it, please?    17 A. (Witness reviewing document.)    18 Q. Have you had a chance to review the    19 documents, Mr. Miller?    20 A. Yes, sir.    21 Q. All right, let's do some housecleaning    22 and see if I screwed it up again. All right, on</p>	<p style="text-align: right;">Page 204</p> <p>1 A. (Witness so doing).    2 Q. Can you identify this document?    3 MS. TABACCHI: Object to the form to    4 the extent that you are assuming that Exhibit    5 Miller 1168 comprises a single document.    6 MR. SISNEROS: No, I'm -- actually, I'm    7 going to ask about every page.    8 MS. TABACCHI: The question as stated -    9 -    10 MR. SISNEROS: Oh, I'm sorry.    11 BY MR. SISNEROS:    12 Q. Okay, regarding the first page of the    13 exhibit, "Abbott position on Medicare reform,    14 Monday, November 25th, 1996," do you see that?    15 A. Yes, sir.    16 Q. Does that indicate to you that the    17 Medicare -- strike that.    18 Is this referencing a meeting conducted    19 by the Medicare Working Group on Abbott's    20 position on Medicare reform?    21 MS. TABACCHI: Object to the form.    22 THE WITNESS: It's a list of</p>
<p style="text-align: right;">Page 203</p> <p>1 Exhibit Miller 1168, Page 1, ABT 531161 --    2 A. 53161.    3 Q. 53161.    4 A. Correct.    5 Q. Second page ABT 53162; is that correct?    6 A. Yes, sir.    7 Q. Next page is 53163?    8 A. Yes, sir.    9 Q. 53164?    10 A. Yes, sir.    11 Q. 53165?    12 A. Yes, sir.    13 Q. 53166?    14 A. Yes, sir.    15 Q. 53167?    16 A. Yes, sir.    17 Q. 53168?    18 A. Yes, sir.    19 Q. And 53169?    20 A. Yes, sir.    21 Q. All right, if you could turn to the    22 first page, ABT 53161?</p>	<p style="text-align: right;">Page 205</p> <p>1 participants in a meeting of the Medicare Working    2 Group.    3 BY MR. SISNEROS:    4 Q. Okay. And when you say "participants,"    5 are you saying participants at the meeting of    6 November the 25th, 1996?    7 A. It's labeled with those that were --    8 it's labeled to distinguish between those that    9 attended, those that participated via phone    10 calls, and those that weren't there.    11 Q. And those that weren't there, there is    12 an asterisk next to their name, correct?    13 A. Correct.    14 Q. And those who participated by phone,    15 there is a double asterisk next to their name?    16 A. Correct.    17 Q. And does that mean that those who    18 attended, there is nothing next to their name?    19 MS. TABACCHI: Object to the form.    20 BY MR. SISNEROS:    21 Q. Or let me ask it this way. How is it    22 indicated who attended that meeting?</p>

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1 MS. TABACCHI: Object to the form. 2 THE WITNESS: There is no positive 3 identification. 4 BY MR. SISNEROS: 5 Q. Do you recall attending this meeting? 6 A. Do I recall? No. 7 Q. From -- from this first page, ABT 8 53161, it does though indicate that there was a 9 meeting of the Medicare Working Group regarding 10 Abbott's position on Medicare reform, correct? 11 A. Correct. 12 Q. Okay. If you could turn to the next 13 page, ABT 53162, do you have that in front of 14 you? 15 A. Yes, sir. 16 Q. Do you know Bill Dwyer? 17 A. Yes, sir. 18 Q. Okay, he was part of the Medicare 19 Working Group; is that right? 20 A. Yes, sir. 21 Q. Okay. Page ABT 53162 of Exhibit Miller 22 1168 seems to memorialize a phone conference,	1 53165, at the top of the page says "page 3 of 3." 2 Do you see that? 3 A. Yes, sir. 4 Q. Does that indicate to you that those 5 three pages, ABT 53163, 64 and 65, are a fax that 6 you received? 7 A. It's my hand -- it's my hand -- yes. 8 Q. And what you received from him was a 9 "Proposed Abbott position re Medicare reform" 10 dated 11/25/96, right? 11 A. Correct. 12 Q. But by the way the -- is that your 13 handwriting on the upper right-hand corner of ABT 14 531163, the fax cover sheet? Is that your 15 handwriting up at the -- above? 16 A. Yes. 17 MR. SOFFER: Counsel, just for 18 clarification, I hear you doubling the 1, I 19 think, in 53163. 20 MR. SISNEROS: All right. 21 MR. SOFFER: We are talking about 22 53163, correct?
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1 telephone conference with Mr. Dwyer. Do you 2 agree? 3 A. It purports to be that. 4 Q. Are these your notes? 5 A. I have no idea whose notes these are. 6 Q. Okay. All right, let's go to the third 7 page of Exhibit Miller 1168, ABT 53163. You see 8 that? 9 A. Yes, sir. 10 Q. And that is a -- a faxed cover sheet of 11 a fax being sent by you to Don Buell, Director 12 Health Economics and Policy; is that correct? 13 A. No, sir. Reverse. 14 Q. Oh, to you from Mr. Buell? 15 A. Yes, sir. 16 Q. Okay. And what he has sent you is the 17 "Revised position re Medicare," correct? 18 A. That's what it states. 19 Q. And at the top of the fax that you 20 received, it's "page 1 of 3," and then the 21 following page, ABT 53164, at the very top says 22 "page 2 of 3" and then the following page, ABT	1 MR. SISNEROS: That is correct. 2 MR. SOFFER: All right. 3 MR. SISNEROS: And it's entitled "fax 4 cover sheet." 5 THE WITNESS: I'm sorry? 6 MR. SOFFER: I'm just confirming that 7 we're talking about the same page. 8 THE WITNESS: All right. 9 BY MR. SISNEROS: 10 Q. All right, you see where that says "fax 11 cover sheet"? 12 A. Yes. 13 Q. And to the right of that, there's some 14 handwriting? 15 A. Um-hum. Yes, sir. 16 Q. Is that your handwriting? 17 A. Those are my notes. 18 Q. Okay. Okay, was this fax -- excuse me. 19 Was Mr. Buell's fax to you discussed within the 20 Medicare Working Group? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: I believe -- I believe

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<p>1 this document is covered in Exhibit Miller 1167.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. I'm sorry, say again?</p> <p>4 A. I believe this document is covered in</p> <p>5 your document Exhibit Miller 1167.</p> <p>6 Q. Okay, if you would turn to Exhibit</p> <p>7 Miller 1167 and review that, that is Mr. Buell's</p> <p>8 memo to you of his report on "meeting of the</p> <p>9 AMA/Industry Round Table." Do you see that?</p> <p>10 A. So this was after. 11/25? So this was</p> <p>11 written after the meeting.</p> <p>12 Q. Okay, well, let me ask the --</p> <p>13 A. Go ahead.</p> <p>14 Q. What do you mean this was written</p> <p>15 after? What are you referring to?</p> <p>16 A. I'm referring to -- I'm sorry, I'm</p> <p>17 looking at the dates on the document.</p> <p>18 Q. Okay, and the sequence of documents</p> <p>19 that you commented on, could you please clarify</p> <p>20 for the record what documents you were referring</p> <p>21 to in --</p> <p>22 A. I'm looking at Abbott document 53316</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. All right, now let's go to</p> <p>3 Exhibit -- same exhibit, Exhibit Miller 1168, but</p> <p>4 to page -- to ABT 53166.</p> <p>5 A. (Witness so doing.)</p> <p>6 Q. And those are handwritten notes</p> <p>7 entitled, "Medicare 11/25/96." Is that right?</p> <p>8 A. That is correct.</p> <p>9 Q. Is that your handwriting?</p> <p>10 A. That is my handwriting.</p> <p>11 Q. The fourth line from the bottom --</p> <p>12 A. One, two, three, four.</p> <p>13 Q. -- you wrote the following: "Estimated</p> <p>14 acquisition cost (invoice versus waste,</p> <p>15 distribution) - reimbursement - oncology."</p> <p>16 What do you mean by those notes?</p> <p>17 A. I do not remember.</p> <p>18 Q. And the top of the page where you have</p> <p>19 -- where it says, "Medicare 11/25/96," does the</p> <p>20 11/25/96 reference the day that you wrote these</p> <p>21 notes?</p> <p>22 A. Yes.</p>
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<p>1 dated November 21st, 1996.</p> <p>2 Q. Actually, I wasn't even asking</p> <p>3 questions about that.</p> <p>4 A. Oh.</p> <p>5 Q. I was asking questions about on Exhibit</p> <p>6 16 -- Exhibit Miller 1168. On Exhibit Miller</p> <p>7 1168 -- you got that?</p> <p>8 A. Yep.</p> <p>9 Q. (Continuing) -- I was asking whether</p> <p>10 Mr. Miller's fax to you --</p> <p>11 A. Mr. Buell's fax.</p> <p>12 Q. Excuse me. (Continuing) -- Mr. Buell's</p> <p>13 fax to you of three pages where he's sent to you</p> <p>14 "proposed Abbott position Medicare reform,"</p> <p>15 whether that fax and his two pages of the</p> <p>16 proposed Abbott position, whether that was</p> <p>17 discussed in the Medicare Working Group?</p> <p>18 A. I do not know whether this specific</p> <p>19 document was discussed.</p> <p>20 Q. Was the subject matter --</p> <p>21 A. Yes.</p> <p>22 Q. -- discussed?</p>	<p>1 Q. All right, now, going back to Exhibit</p> <p>2 Miller 1167 --</p> <p>3 A. Um-hum.</p> <p>4 MR. SISNEROS: Let's go off the record</p> <p>5 for a change of tape.</p> <p>6 THE VIDEOGRAPHER: We are off the</p> <p>7 record at 2:32 p.m. with the end of Tape No. 3.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record at 2:34 p.m. with the start of Tape No. 4.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. All right, let me make a little change</p> <p>13 here. Stay on Exhibit Miller 1168, the page</p> <p>14 you're on, your handwritten notes, ABT 53166. Do</p> <p>15 you see that?</p> <p>16 A. Okay. Yes, sir.</p> <p>17 Q. All right, you've testified this is</p> <p>18 your handwriting?</p> <p>19 A. Yes.</p> <p>20 Q. What -- what is this?</p> <p>21 A. It appears to be my notes from a</p> <p>22 presentation or discussion.</p>

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<p style="text-align: right;">Page 214</p> <p>1 Q. By Don Buell?    2 A. I do not know.    3 Q. And would you agree that the subject    4 matter of -- of your handwritten notes seems to    5 be "the American Medical Association" and some    6 notes regarding Medicare reform?    7 MS. TABACCHI: I'll object to the form.    8 BY MR. SISNEROS:    9 Q. Well, let me ask it this way. What is    10 the subject matter of your handwritten notes?    11 A. The AMA proposal.    12 Q. Now, who was monitoring the AMA and    13 their activity with regard for the Medicare --    14 proposed Medicare reform?    15 A. It would have been the Pharmaceutical    16 Division and the Washington office.    17 Q. Well, what about Don Buell?    18 A. He is a member of the Pharmaceutical    19 Division.    20 Q. Okay. How about Dr. Conway?    21 A. He is a member of the Pharmaceutical    22 Division.</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. And by four days earlier, I'm    2 referencing four days earlier than your    3 handwritten notes; is that right?    4 A. That is correct.    5 Q. And he is reporting to you regarding    6 the meeting of the AMA/Industry Round Table    7 Steering Committee; is that right?    8 A. That is correct.    9 Q. Did -- do you know if Buell attended    10 this meeting?    11 A. The AMA meeting?    12 Q. Yes.    13 A. I do not know with certainty.    14 (Exhibit Miller 1169 was marked    15 for ID)    16 BY MR. SISNEROS:    17 Q. Okay. Okay, I'm going to hand to you    18 what has been marked and identified as Exhibit    19 Miller 1169 to your deposition.    20 Could you please take a few minutes and    21 review those notes or memos?    22 A. (Witness reviewing document.)</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. Were both of them involved in    2 monitoring the AMA activity?    3 A. I --    4 MS. TABACCHI: Object to the form.    5 THE WITNESS: I do not know, sir.    6 BY MR. SISNEROS:    7 Q. Well --    8 A. We --    9 Q. Go ahead.    10 A. Question not asked.    11 Q. Yeah, okay. Well, look at Exhibit    12 Miller 1167 --    13 A. Um-hum.    14 Q. -- starting at the page ABT 531 --    15 A. Yeah.    16 Q. I'm sorry, at ABT 53316.    17 A. Yes, sir.    18 Q. And that is Buell's memo to you of four    19 days earlier --    20 A. Yes.    21 Q. -- is that correct?    22 A. Yes, sir.</p>	<p style="text-align: right;">Page 217</p> <p>1 Yes, sir.    2 Q. You done reading?    3 A. (Witness nodding.)    4 Q. Okay, this is email -- excuse me. This    5 is a memoranda from you dated November the 26th,    6 1996 addressed to Mary Quinn Boyd and cc to D.    7 Buell and R. Rieger, correct?    8 A. Correct.    9 Q. And the subject matter of your memo is,    10 "Proposed Abbott position Medicare reform." Is    11 that right?    12 A. Correct.    13 Q. And the sentence -- the sentence that    14 follows the re line is, "Attached is a revised    15 draft reflecting the inputs of all the divisions'    16 representatives. I see the approval process as    17 follows:" And then you lay it out, right?    18 A. Correct.    19 Q. Okay, and so when you're talking about    20 the the inputs of all the division    21 representatives in that first sentence, you're    22 referring to the input of the division</p>

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<p>1 representatives in the Medicaid -- Medicare  2 Working Group; is that right?  3 A. Yes.  4 Q. And so the attached two documents that  5 are the proposed Abbott position paper re  6 Medicare reform is a -- your final product that  7 is being run up the chain, is that right, up the  8 chain of command?  9 MS. TABACCHI: Object to the form.  10 BY MR. SISNEROS:  11 Q. Okay, let me try to be more clear. Who  12 is Mary Quinn Boyd?  13 A. She's -- she was in Corporate Public  14 Affairs.  15 Q. In terms of corporate level, was she  16 above your level?  17 A. No.  18 Q. Was she below your level?  19 MS. TABACCHI: Object to the form.  20 THE WITNESS: I do not know that with a  21 hundred percent certainty.  22 BY MR. SISNEROS:</p>	<p>1 A. By the Medicare Working Group.  2 Q. And in your memo to Mary Quinn Boyd, is  3 -- you are proposing approval of that document?  4 A. Yes.  5 Q. Then what follows is -- is a schedule.  6 For example, "Monday, 12/2/96, Public Affairs  7 approves." Did I read that correctly?  8 A. Correct.  9 Q. And what you're doing is you're getting  10 approvals of different divisions or different  11 offices on this document, right?  12 A. That was what was proposed.  13 Q. Okay. We're talking about the proposed  14 document here.  15 A. Yes, sir.  16 Q. Okay, and then for Tuesday's agenda --  17 then you have, "Tuesday, 12/3/96, division  18 representatives obtained their division  19 presidents' approval."  20 Did I read that correctly?  21 A. You read that correctly.  22 Q. And the reference to "division</p>
Page 219	Page 221
<p>1 Q. Was she -- okay, was she at your level?  2 MS. TABACCHI: Object to the form.  3 THE WITNESS: I do not believe so.  4 BY MR. SISNEROS:  5 Q. Okay, why were you sending this to Mary  6 Quinn Boyd?  7 A. She was the person in Public Affairs  8 that would take it to her boss for approval.  9 Q. I see. Now, am I accurate in saying  10 that the attached Abbott position paper was the  11 work product of the Medicare Working Group?  12 MR. SOFFER: Objection.  13 MS. TABACCHI: Object to the form as  14 well.  15 BY MR. SISNEROS:  16 Q. Oh. Well, let me try this differently.  17 Was the attached proposed Abbott position work  18 generated in the Medicare Working Group?  19 MS. TABACCHI: Object to the form.  20 THE WITNESS: It is a draft document.  21 BY MR. SISNEROS:  22 Q. That was generated by who?</p>	<p>1 representatives" means the division  2 representatives that sat on the Medicare Working  3 Group, correct?  4 A. Correct.  5 Q. And their job was to go back and get  6 the approval on the draft from the presidents of  7 their division?  8 A. Correct.  9 Q. And then for Wednesday, December the  10 4th, 199 --  11 A. Can I stop this discussion for a  12 second? This document was never approved.  13 Q. That's fine.  14 A. Okay.  15 Q. Then going -- then going on to your  16 schedule of Wednesday, December 4th -- excuse me.  17 Let me read this different. It says, "Wednesday"  18 -- it says, "Wednesday, 12/4/96, distribute to  19 GPC, TRH and DLB."  20 Did I read that correctly?  21 A. That's as stated.  22 Q. I'm sorry?</p>

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<p style="text-align: right;">Page 222</p> <p>1 A. As stated.    2 Q. Yeah. And DLB is Dwayne Burnham,    3 right?    4 A. Yes, sir.    5 Q. Who -- who became what, CEO?    6 A. He was CEO.    7 Q. He was CEO. And then TRH is -- is --    8 who's that, Tom --    9 A. Hudson.    10 Q. Hudson. He was also CEO or --    11 A. President.    12 Q. He was President. Was he ever CEO?    13 A. No.    14 Q. So he was Abbott's President. And    15 Burnham was Abbott's Chief Executive Officer,    16 correct?    17 A. Yes, sir.    18 Q. And GPC is --    19 A. Gary Coughlin.    20 Q. Okay, and he wasn't your immediate    21 supervisor, but he was Moorehead's supervisor; is    22 that right?</p>	<p style="text-align: right;">Page 224</p> <p>1 My name is Rebecca Ford. I'm with the    2 Department of Justice, and I represent the United    3 States in the case U.S. ex. rel. Ven-a-Care,    4 Florida Keys vs. Abbott laboratories.    5 THE WITNESS: Thank you.    6    7 DIRECT EXAMINATION    8 BY MS. FORD:    9 Q. And this is one of the cases in which    10 your deposition has called today. It's separate    11 from the action in which Mr. Sisneros represents    12 the State of California, but they're related    13 litigation.    14 Do you understand that there are    15 multiple lawsuits that you are being deposed in    16 today?    17 A. That's what my lawyers have advised me.    18 Q. Okay. And although we've switched    19 questioners, you're still under oath, and we're    20 still continuing the deposition. And I'll just    21 remind you that counsel may object from time-to-    22 time, both your counsel and counsel from Abbott</p>
<p style="text-align: right;">Page 223</p> <p>1 A. Yes, sir.    2 Q. And what what was his title?    3 A. Chief Financial Officer.    4 Q. There's some notes down at the bottom    5 of the memo, Mr. Miller. Are those handwritten    6 notes in your handwriting?    7 A. Those are not my notes.    8 MR. SISNEROS: Okay. All right, thank    9 you for your time, Mr. Miller. I pass the    10 witness.    11 THE WITNESS: Thank you.    12 MS. FORD: Can we go off the record for    13 just a second?    14 THE VIDEOGRAPHER: We are off the    15 record at 2:46 p.m.    16 (Recess taken.)    17 THE VIDEOGRAPHER: We are back on the    18 record at 2:54 p.m.    19 MS. FORD: Mr. Miller, good afternoon.    20 I introduced myself this morning briefly off the    21 record, but for purposes of the record, I'll    22 introduce myself again.</p>	<p style="text-align: right;">Page 225</p> <p>1 may object from time-to-time, but unless they    2 instruct you not to answer, you may answer the    3 question.    4 I believe you testified earlier that    5 you retired from Abbott in 2003; is that correct?    6 A. December 31st, 2003.    7 Q. Okay. And have you held any    8 professional positions since that time?    9 MS. TABACCHI: Object to the form.    10 BY MS. FORD:    11 Q. Do you understand my question?    12 A. Rephrase, please.    13 Q. Have you worked since December of 2003?    14 A. Yes.    15 Q. And what was your job most recently    16 after retiring from Abbott in December of 2003?    17 A. Oh, everything I've done is of a    18 consulting nature.    19 Q. Okay.    20 A. I consulted for Abbott for several    21 months after I retired as part of the transition    22 of the lady that replaced me.</p>

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<p style="text-align: right;">Page 226</p> <p>1 Q. Okay. And when did that consulting 2 end? 3 A. It was probably March 2004. 4 Q. Okay. And other than consulting with 5 Abbott to help train your replacement, have you 6 done any consulting for Abbott or any Abbott 7 affiliate since that time? 8 A. No. 9 Q. Okay. Have you worked for -- done any 10 consulting work for TAP since that time? 11 A. No. 12 Q. Okay. Do you currently receive any 13 retirement benefits from Abbott? 14 A. Yes. 15 Q. Okay, and do you own Abbott stock? 16 A. I do not. 17 Q. Okay. Other than currently receiving 18 retirement benefits, do you have any other 19 connections to Abbott at this point in time? 20 MS. TABACCHI: Object to the form. 21 MR. SOFFER: Objection. 22 BY MS. FORD:</p>	<p style="text-align: right;">Page 228</p> <p>1 the witness that, to the extent his understanding 2 is based purely on communications with counsel, 3 he should not reveal the substance of 4 communications with counsel. 5 MR. SOFFER: Are you able to answer 6 that question without necessarily disclosing 7 conversations you have had with either me or Mr. 8 Hoffman or Ms. Tabacchi? 9 THE WITNESS: I have my own attorneys. 10 BY MS. FORD: 11 Q. And are you receiving a bill for your 12 legal services? 13 A. No. 14 Q. Do you know who is paying for your 15 legal services? 16 A. Abbott. 17 Q. Okay. Earlier this morning, I believe 18 you testified that you thought of Abbott at some 19 point in time as six companies. Did I -- am I 20 remembering correctly? 21 A. That's my characterization of Abbott. 22 Q. Okay, what did you mean by that?</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. Let me see if I can help you out. Do 2 you have any family members that work for Abbott? 3 A. No. 4 Q. Okay. Any close friends that still 5 work at Abbott? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: No. 8 BY MS. FORD: 9 Q. And what is your understanding of how 10 you're being represented today? Are you being 11 represented by Abbott counsel? 12 MS. TABACCHI: Object to the form. 13 I'm going to caution the witness not to 14 reveal the substance of any communications with 15 counsel. 16 MR. SOFFER: Objection. 17 BY MS. FORD: 18 Q. I'm not asking you to discuss anything 19 you have discussed with your counsel. I'm just 20 asking your understanding of who is representing 21 you. 22 MS. TABACCHI: I'm going to instruct</p>	<p style="text-align: right;">Page 229</p> <p>1 A. They operate fairly autonomously and 2 report up through -- in 31 years, the 3 organization changed many times, but they 4 basically operate up through a line structure. 5 Q. Okay, and when you say "they," who are 6 referring to? 7 A. The divisions. 8 Q. Okay, and could you just for my own 9 purposes list out the six divisions that you were 10 discussing or that you're referring to? Excuse 11 me. 12 A. You've got Ross Laboratories, Hospital 13 Products Division, Pharmaceutical Products 14 Division, Diagnostics Division, and the 15 International Division. Is that five or six? 16 Q. That's five. 17 A. Five, okay. 18 Q. Can you think of the last one? 19 A. No. 20 Q. Okay. Could the last one have been 21 TAP? 22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 230</p> <p>1        THE WITNESS: TAP is a joint venture.    2 BY MS. FORD:    3        Q. Okay, so when you referenced six    4 companies, were you referring -- was TAP one of    5 the six that you were referring to?    6        MS. TABACCHI: Object to the form.    7        THE WITNESS: No.    8 BY MS. FORD:    9        Q. So there's one other you just can't    10 remember at this time?    11        A. There's basically Corporate.    12        Q. Corporate, okay.    13        I wanted to ask you just a little bit    14 more about TAP. You have indicated throughout    15 your testimony today that TAP was at least at    16 some of the Medicare Working Group meetings; is    17 that correct?    18        A. That is correct.    19        Q. And a representative of TAP is on the    20 Medicaid Working Group distribution list; is that    21 correct?    22        MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 232</p> <p>1        list?    2        MS. TABACCHI: Object to the form.    3        THE WITNESS: TAP was jointly owned by    4 Abbott and Takeda of Japan. So anything that    5 would have affected TAP would 50% flow through to    6 Abbott.    7 BY MS. FORD:    8        Q. To your knowledge, was TAP included on    9 other internal committees of Abbott?    10        A. Oh, yes.    11        Q. Okay. Can you give me an example of a    12 few of those?    13        A. Sure. I mean in the Controller's    14 Council, the MIS areas. I mean it's not unusual    15 for TAP to have been on an Abbott committee.    16        Q. What about public relations, did TAP    17 have their own public relations?    18        MS. TABACCHI: Object to the form.    19        THE WITNESS: I'm not qualified to    20 answer that.    21 BY MS. FORD:    22        Q. Do you know?</p>
<p style="text-align: right;">Page 231</p> <p>1        MS. FORD: What is wrong?    2        MS. TABACCHI: It's Medicare.    3        MS. FORD: Oh, thank you.    4 BY MS. FORD:    5        Q. At least one representative of TAP is    6 listed on the Medicare Working Group distribution    7 list; is that correct?    8        A. That is correct.    9        Q. And that is John Campbell; is that    10 correct?    11        A. Yes.    12        Q. Okay. Did you work with anyone else    13 from TAP in the context of the Medicare Working    14 Group?    15        A. I do not recall.    16        Q. Okay. Do you recall any -- anyone else    17 from TAP attending Medicare Working Group    18 meetings?    19        A. No.    20        Q. Okay. If Abbott is a separate company    21 from TAP, why was TAP included on Abbott's    22 internal Medicare Working Group distribution</p>	<p style="text-align: right;">Page 233</p> <p>1        A. I think so.    2        Q. You think they had their own public    3 relations?    4        A. Yes, but I wouldn't swear to it.    5        Q. Okay.    6        MS. TABACCHI: That's the standard.    7        MR. SOFFER: There you go. That's one    8 of those rare moments where it actually makes    9 sense to say that.    10 BY MS. FORD:    11        Q. I want to go back to a little bit of    12 your testimony this morning when you and Mr.    13 Sisneros talked about the inception of the    14 Medicare Working Group, and I believe you    15 testified that Mr. Moorehead asked you to create    16 the group. Is that correct?    17        A. That is correct.    18        Q. Okay, and do you recall the discussions    19 that you had with Mr. Moorehead around that time?    20        MS. TABACCHI: Object to the form.    21 BY MS. FORD:    22        Q. Let me be more specific. Do you recall</p>

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<p style="text-align: right;">Page 234</p> <p>1 having discussions with Mr. Moorehead in which he 2 asked you to -- to head up the Medicare Working 3 Group?</p> <p>4 A. Yes.</p> <p>5 Q. Did those discussions occur over the 6 telephone?</p> <p>7 A. No.</p> <p>8 Q. Were they in person?</p> <p>9 A. Our offices were next to each other.</p> <p>10 Q. Okay --</p> <p>11 A. Yes.</p> <p>12 Q. -- so, yes, they were in person.</p> <p>13 And do you recall how many times that 14 you had discussions with Mr. Moorehead about the 15 creation of the Medicare Working Group?</p> <p>16 A. No.</p> <p>17 Q. Do you think it was more than two?</p> <p>18 A. Probably.</p> <p>19 Q. Okay. Generally, what do you call -- 20 recall from those discussions about the reasons 21 for the creation of the Medicare Working Group?</p> <p>22 A. I do not remember the reason for the</p>	<p style="text-align: right;">Page 236</p> <p>1 have bosses, and it was, your boss asks you to do 2 it, you do it.</p> <p>3 BY MS. FORD:</p> <p>4 Q. Okay, you indicated that no one at your 5 level had been involved with the group before. 6 Does that mean the group existed prior to your 7 becoming a part of it?</p> <p>8 A. I do not know.</p> <p>9 Q. Okay. And upon getting this new 10 assignment, you -- do you think that you would 11 have inquired about the purpose or the goals of 12 the group?</p> <p>13 A. Oh, we had -- as I've testified 14 earlier, we had people show up and say, "Why am I 15 here?" So we had some difficulty in even getting 16 the right representatives in the room.</p> <p>17 Q. And in response to their question of, 18 "Why am I here," what did you say?</p> <p>19 A. "We're setting up an information- 20 sharing group so that we can be -- you can keep 21 us informed of changes in your area of -- you 22 know, of healthcare coverage."</p>
<p style="text-align: right;">Page 235</p> <p>1 formation.</p> <p>2 Q. Do you recall whether Mr. Moorehead 3 gave you a particular objective for the Medicare 4 Working Group?</p> <p>5 A. Set up an information sharing group. 6 And that's what we did. Why we --</p> <p>7 Q. Is it your testimony that you probably 8 knew why at the time, you just can't recall 9 today? Is that what you're --</p> <p>10 MS. TABACCHI: Object to the form. 11 THE WITNESS: I don't remember, you 12 know.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Okay, let me ask you this. Based on 15 your history with Abbott, would it have been 16 typical for someone to ask you to form a working 17 group, but you not -- but for you not to know why 18 you were forming the group?</p> <p>19 MS. TABACCHI: Object to the form. 20 THE WITNESS: This was a new assignment 21 for me. There had never been a person of my level 22 in this group before. So it was -- again, we all</p>	<p style="text-align: right;">Page 237</p> <p>1 Q. Was anyone in the Medicare Working 2 Group tasked with doing anything with the 3 information they received?</p> <p>4 MS. TABACCHI: Object to the form. 5 MR. SOFFER: Objection, vague. 6 THE WITNESS: Beyond sharing?</p> <p>7 BY MS. FORD:</p> <p>8 Q. (Counsel nodding.) 9 A. No.</p> <p>10 Q. So what was the purpose of sharing the 11 information if there was no objective to 12 accomplish?</p> <p>13 MS. TABACCHI: Object to the form. 14 THE WITNESS: I'd be giving you my 15 opinion.</p> <p>16 BY MS. FORD:</p> <p>17 Q. Well, as a head of the group, I would 18 be interested in what your opinion is.</p> <p>19 A. Okay, my opinion would be it was to -- 20 if a state was making changes to a TAP product in 21 the doctor's office, that same change might 22 affect a hospital product sold in the doctor's</p>

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<p style="text-align: right;">Page 238</p> <p>1 office.</p> <p>2 Q. Okay. And so if a state were to make a 3 change in Medicaid that would affect a TAP 4 product that could also have some spill-over 5 effect on an HPD product, would it be your 6 expectation that someone from TAP and/or HPD 7 would do something with that information?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: Objection, vague.</p> <p>10 THE WITNESS: I'd be speculating.</p> <p>11 BY MS. FORD:</p> <p>12 Q. Okay. You indicated earlier that the 13 group disbanded sometime in late '97; is that 14 correct?</p> <p>15 A. That's my understanding.</p> <p>16 Q. Okay. And I believe you said it was 17 because it was no longer a top five priority for 18 Abbott.</p> <p>19 Did I summarize your earlier testimony 20 accurately?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: In my opinion, the -- Mr.</p>	<p style="text-align: right;">Page 240</p> <p>1 A. (Witness nodding.)</p> <p>2 Q. Your department, okay.</p> <p>3 I think you spoke at length with Mr. 4 Sisneros about who the Medicare Working Group 5 minutes were distributed to. Aside from that, 6 did you have discussions with others in your 7 department about the workings or the discussions 8 of the Medicare Working Group?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: No. I mean it's hard to 11 -- you know, to the best of my knowledge, no.</p> <p>12 BY MS. FORD:</p> <p>13 Q. So after the conversations that you had 14 with Mr. Moorehead prior to the group forming, 15 you didn't have any more discussions with him 16 about the Medicare Working Group?</p> <p>17 A. It would be a lunch-time conversation: 18 How's it going?</p> <p>19 Q. Okay. Were you ever asked to report on 20 the workings of the Medicare Working Group to Mr. 21 Moorehead?</p> <p>22 A. I gave Mr. Moorehead a monthly report</p>
<p style="text-align: right;">Page 239</p> <p>1 Moorehead retired, Mr. Weiger came in, and we 2 increased the emphasis on product acquisition, 3 licensing focus. That was our focus.</p> <p>4 BY MS. FORD:</p> <p>5 Q. Okay. So after Mr. Moorehead retired, 6 was his -- did the person who took his place, was 7 he no longer asking you about the Medicare 8 Working Group?</p> <p>9 A. It --</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: In my opinion, it became 12 a lower priority.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Okay, and on what basis are you saying 15 it became a lower priority?</p> <p>16 A. Based on the emphasis the group put on 17 it.</p> <p>18 Q. The Medicare Working Group?</p> <p>19 A. No.</p> <p>20 Q. Which group?</p> <p>21 A. My department.</p> <p>22 Q. Your department?</p>	<p style="text-align: right;">Page 241</p> <p>1 of my activities.</p> <p>2 Q. Okay, and did that include all of the 3 activities that you were responsible for as 4 Divisional Vice President --</p> <p>5 A. Yes.</p> <p>6 Q. -- of Corporate Development?</p> <p>7 And did that monthly report typically 8 include an update on the Medicare Working Group?</p> <p>9 A. If there were events that warranted 10 their inclusion.</p> <p>11 Q. Okay. What types of events warranted 12 inclusion in your monthly update to Mr. 13 Moorehead?</p> <p>14 A. If there -- if there was a pending 15 legislation that would have a -- potentially a 16 significant financial impact, you would at least 17 put it in your monthly report so he would be 18 aware of it.</p> <p>19 Q. And what would be the purpose of making 20 Mr. Moorehead aware of that legislation, for 21 example?</p> <p>22 A. If his boss came to see him and said,</p>

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<p style="text-align: right;">Page 242</p> <p>1 "What about HR 321," that Dick would not be 2 embarrassed?</p> <p>3 Q. Okay, was it your understanding that 4 Mr. Moorehead and some of his superiors were 5 interested in the subject of Medicare and 6 Medicaid reform?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 MR. SOFFER: Objection, calls for 9 speculation.</p> <p>10 THE WITNESS: Rephrase?</p> <p>11 BY MS. FORD:</p> <p>12 Q. Did you understand my question?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Then if you -- okay, then you 15 may answer.</p> <p>16 MS. TABACCHI: Same objection.</p> <p>17 THE WITNESS: Anything that would have 18 a negative financial impact, management would be 19 concerned about.</p> <p>20 BY MS. FORD:</p> <p>21 Q. So was that -- is that a yes?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 244</p> <p>1 Q. Okay. How did it -- how did it end?</p> <p>2 A. It just -- in my opinion, it died due 3 to lack of direction.</p> <p>4 Q. Okay, so you had what would have been 5 one of your last meetings, and another meeting 6 just never got scheduled? Was it something like 7 -- of that nature?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. When you first got the 10 assignment from Mr. Moorehead to head up the 11 Medicare Working Group, did you do anything to 12 educate yourself about the issues that would be 13 discussed in the Medicare Working Group?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I think I asked for 16 background documents from the divisions.</p> <p>17 BY MS. FORD:</p> <p>18 Q. Okay, and do you recall who you would 19 have made that request from -- or made the 20 request to?</p> <p>21 A. I would have made the request to Rich 22 to get me some information.</p>
<p style="text-align: right;">Page 243</p> <p>1 Q. Okay. Did you ever have any 2 discussions with Mr. Moorehead about any 3 particular legislation?</p> <p>4 A. I do not recall.</p> <p>5 Q. Okay. Did Mr. Moorehead ever indicate 6 to you that he was taking the information that 7 you provided him and passing it up the chain?</p> <p>8 A. No.</p> <p>9 Q. Did you ever have a meeting with anyone 10 who was above Mr. Moorehead's level?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 BY MS. FORD:</p> <p>13 Q. I'll ask you more specific. About the 14 Medicare Working Group?</p> <p>15 A. No.</p> <p>16 Q. About Medicare or Medicaid 17 reimbursement generally?</p> <p>18 A. No.</p> <p>19 Q. You indicated that the Medicare Working 20 Group was discontinued in late '97. Did someone 21 tell you to disband the group?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 245</p> <p>1 Q. Okay. And is it your recollection that 2 he did in fact get you some background 3 information?</p> <p>4 A. Yes.</p> <p>5 Q. Okay, and do you recall the nature of 6 those background documents?</p> <p>7 A. I think that the AMA stuff was 8 provided.</p> <p>9 Q. Did you make an attempt at that point 10 to learn about the current reimbursement system?</p> <p>11 MS. TABACCHI: Object --</p> <p>12 THE WITNESS: No.</p> <p>13 BY MS. FORD:</p> <p>14 Q. I think you testified earlier that Mr. 15 Rieger's primarily responsible for generating the 16 minutes of the meeting; is that correct?</p> <p>17 A. That is accurate.</p> <p>18 Q. Was there anyone responsible for 19 maintaining the minutes, keeping them?</p> <p>20 A. Keeping them? Keeping them? You mean 21 keeping a file copy?</p> <p>22 Q. Keeping a file copy.</p>

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1 A. Mr. Rieger. 2 Q. Okay. Was Mr. Rieger similarly 3 responsible for distributing the minutes? 4 A. I'm going to sound sexist here. Our 5 admin -- our admin was responsible for 6 distributing the minutes. 7 Q. Okay, who was responsible for directing 8 your admin to distribute the minutes? 9 A. Rich. 10 Q. Rich. And what -- who was responsible 11 for determining who the minutes would be 12 distributed to? 13 A. We followed the protocol that was on 14 the memo, if -- you know, double asterisk, single 15 asterisk, no asterisk, to the best of my 16 knowledge. 17 Q. And so what does that mean exactly, the 18 term -- in terms of distribution of the minutes? 19 A. I'm sorry. Everybody that was a member 20 of the group should have gotten a copy of the 21 minutes for every meeting. 22 Q. Okay. I meant to tell you at the	1 Buell on November 21st, 1996. Is that correct? 2 A. I'd have to go through the documents to 3 agree with you. 4 Q. Okay, if you want to turn to page 2 -- 5 A. Okay. 6 Q. -- and if you'd look up on the top 7 right-hand corner, it's -- 8 A. Page 2, okay. 9 MR. SOFFER: What's the Bates page? 10 MS. FORD: The Bates is ABT 53172. 11 MS. TABACCHI: Or? 12 MR. SOFFER: Yeah 13 MS. FORD: Or 53316. 14 THE WITNESS: 53316. 15 BY MS. FORD: 16 Q. Yes. 17 A. Okay. 18 Q. Okay. So up in the top right-hand 19 corner, in the -- next to "firm," it says, "Don 20 Buell -- 21 A. Um-hum. 22 Q. -- to Jim Miller --
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1 outset I might have a pause from time-to-time. 2 I'm trying not to retread any ground that you 3 covered this morning unless I have some more 4 specific questions. 5 A. I'd be most appreciative. 6 MR. SOFFER: We'd all be. 7 MS. FORD: So if you can just give me a 8 minute to get the right document. 9 THE WITNESS: We'll give you all the 10 time you want. 11 BY MS. FORD: 12 Q. I'm going to ask you a few more 13 questions about Exhibit Miller 1167, which you 14 should have in front of you. It's a memo -- 15 excuse me. It's an interoffice correspondence 16 dated November 21st, 1996 on your letterhead. 17 Do you see that document? 18 A. Yes, ma'am. 19 Q. Okay, great. And I believe that your 20 earlier testimony -- through your earlier testimony, you established that this memorandum 22 is a cover to a memorandum sent to you by Don	1 A. Yes. 2 Q. -- re report on meeting of the 3 AMA/Industry Round Table Steering Committee." Is 4 that accurate? 5 A. That's what it says. 6 Q. Okay. Do you remember this document 7 from a little bit earlier today or do you want to 8 take a minute to refresh your recollection? 9 A. No, I remember this document. 10 Q. And does there appear to be a memo from 11 Mr. Buell to you updating you on the AMA/Industry 12 Round Table Steering Committee? 13 A. It appears to be documentation of a 14 meeting, yes. 15 Q. Now, if you turn back to page 1 of the 16 exhibit, 55315, we're back to the interoffice 17 correspondence on your letterhead to what appears 18 to be members of the Medicare Working Group; is 19 that correct? 20 A. That is correct. 21 Q. Okay. And the re line says, "Relating 22 to Monday's meeting, 11/25/96, on Medicare

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<p style="text-align: right;">Page 250</p> <p>1 reform, Don Buell's comments." And then    2 following that, it says, "Following is some    3 background material for the meeting on Monday."    4 Did I read that accurately?</p> <p>5 A. That is correct.</p> <p>6 Q. Okay. And you indicate that it's --    7 you're incorporating a three-page attachment?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. So does it appear that you are    10 forwarding to members of the Medicare Working    11 Group a memo that was provided to you by Don    12 Buell?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. Do you know why Mr. Buell was    15 reporting to you on the AMA/Industry Round Table    16 Steering Committee?</p> <p>17 MR. SOFFER: Objection, calls for    18 speculation.</p> <p>19 THE WITNESS: I do not recall.</p> <p>20 BY MS. FORD:</p> <p>21 Q. Okay, do you recall asking him to    22 report to you on the AMA/Industry Round Table</p>	<p style="text-align: right;">Page 252</p> <p>1 Abbott.    2 BY MS. FORD:    3 Q. And if it was important to the --    4 Pharmaceutical Division, is that what you said?    5 A. (Witness nodding.)    6 Q. Do you mean by that Pharmaceutical    7 Products Division?    8 A. Yes.    9 Q. Okay. So if it was only important to    10 the Pharmaceutical Products Division, why was it    11 being elevated to a cross-divisional group such    12 as the Medicare Working Group?    13 MS. TABACCHI: Object to the form.    14 MR. SOFFER: Objection, calls for    15 speculation.</p> <p>16 THE WITNESS: Many of the divisions    17 sell products to physicians. So if you offended    18 the physician community, you could affect more    19 divisions than the Pharmaceutical Division.</p> <p>20 BY MS. FORD:</p> <p>21 Q. So in the -- in the vein of information    22 sharing, was it your understanding that it was</p>
<p style="text-align: right;">Page 251</p> <p>1 Steering --    2 A. That is a logical conclusion.    3 Q. Okay. Did Mr. Buell report to you?    4 A. No.    5 Q. Did you have any connection with Mr.    6 Buell outside of the Medicare Working Group?    7 MS. TABACCHI: Object to the form.</p> <p>8 BY MS. FORD:</p> <p>9 Q. Did you work together on any other    10 projects?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Okay. So in terms of a professional    13 relationship with Mr. Buell, was that limited to    14 the Medicare Working Group?</p> <p>15 A. To the best of my knowledge, yes.</p> <p>16 Q. Okay. Did you consider the    17 AMA/Industry Round Table Steering Committee's    18 work to be of importance to the Medicare Working    19 Group?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: It was presented as    22 important to the Pharmaceutical Division of</p>	<p style="text-align: right;">Page 253</p> <p>1 important for all the divisions of Abbott to be    2 aware of the AMA -- the work of the AMA's    3 Steering Committee?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: I can't answer for all    6 the divisions.</p> <p>7 BY MS. FORD:</p> <p>8 Q. Okay, let's -- looking at your    9 distribution list on page 1, did you limit this    10 to representatives of PPD?</p> <p>11 A. No.</p> <p>12 Q. Okay. It looks like from the list and    13 from what we've established earlier, there are    14 members of several Abbott divisions on the    15 distribution list; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Okay. Was it your habit to forward    18 them information that you thought would be    19 useless to them?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: We shared all information    22 that would be discussed at a meeting.</p>

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<p style="text-align: right;">Page 254</p> <p>1 BY MS. FORD:</p> <p>2 Q. Okay. If you look on page 1 of Mr. 3 Buell's memo, which is again Abbott 53316, a 4 couple of lines after the heading "Executive 5 Summary," it says, "The AMA stated that it would 6 like to see this committee, number one, find 7 common goals to advance in the upcoming policy 8 debate on Medicare and Medicaid."</p> <p>9 Did I read that correctly?</p> <p>10 A. That's what it -- as stated.</p> <p>11 Q. Okay. And then further down on the 12 page, if you look at the third paragraph from the 13 bottom, Mr. Buell wrote, "AMA's goals appear to 14 be to get industry support for its goals, both in 15 lobbying efforts and financially."</p> <p>16 Did I read that accurately?</p> <p>17 A. As stated.</p> <p>18 Q. Okay. Were you involved in the process 19 of deciding whether Abbott would partner with the 20 AMA on its Medicare/Medicaid lobbying efforts?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I would answer no.</p>	<p style="text-align: right;">Page 255</p> <p>1 BY MS. FORD:</p> <p>2 Q. If you turn to Page 2 of Mr. Buell's 3 memo, ABT 53317, about halfway down the page it 4 says, "It was agreed that," and then the third 5 bullet point says "There would be dues of 5,000 6 to \$10,000 for any manufacturer who wanted to be 7 a part of the Steering Committee."</p> <p>8 Did I read that accurately?</p> <p>9 A. As stated.</p> <p>10 Q. Okay, do you know whether Abbott became 11 part of the Steering Committee?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I do not know.</p> <p>14 BY MS. FORD:</p> <p>15 Q. Okay. If you'd turn to the last page 16 of the exhibit, which is ABT 53318, the very last 17 paragraph, it says, "I believe it will be 18 difficult to get the Pharmaceutical members of 19 the Steering Committee to agree among themselves 20 on priorities for Medicare much less get AMA to 21 go along with any of it. However, it is an 22 opportunity we should not miss. Perhaps, if we</p>
<p style="text-align: right;">Page 255</p> <p>1 BY MS. FORD:</p> <p>2 Q. Okay, was that a decision that was made 3 by the Medicare Working Group?</p> <p>4 A. No.</p> <p>5 Q. Okay, did you -- was it your 6 understanding that Abbott did partner in the 7 effort with the AMA's Steering Committee on 8 Medicare/Medicaid reform?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: I do not know.</p> <p>11 BY MS. FORD:</p> <p>12 Q. Okay. Do you know whether Abbott 13 provided financial assistance to the -- to the 14 AMA Steering Committee?</p> <p>15 A. I do not know.</p> <p>16 Q. Okay. Do you know whether anyone from 17 Abbott participated as part of the policy 18 Steering Committee?</p> <p>19 A. Of the AMA?</p> <p>20 Q. AMA, yes.</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I do not know.</p>	<p style="text-align: right;">Page 257</p> <p>1 could just get AMA to endorse 'access' for 2 patients, 'access' to the physician of their 3 choice and to the medical technologies best 4 suited for their individual conditions, it would 5 be a major accomplishment. Thanks again for 6 setting up the November 25th meeting."</p> <p>7 Did I read that accurately?</p> <p>8 A. As stated.</p> <p>9 Q. Okay, was it your understanding at this 10 time that Abbott continued to participate in the 11 AMA Steering Committee?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I do not know if Abbott 14 was a member of the Steering Committee.</p> <p>15 BY MS. FORD:</p> <p>16 Q. Okay. We -- you testified earlier 17 about the creation of of policy statement by 18 Abbott to be submitted to the AMA; is that 19 correct?</p> <p>20 A. There was a draft of a policy 21 statement.</p> <p>22 Q. Okay. To your understanding, it was in</p>

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<p>1 connection with the AMA/Industry Round Table  2 Steering Committee?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MS. FORD:</p> <p>6 Q. And I believe you indicated that the  7 draft of that policy was generated by the  8 Medicare Working Group; is that correct?</p> <p>9 A. It was generated by the  10 representatives, yes.</p> <p>11 Q. If you could take a look at Exhibit  12 Miller 1169, which you should have in front of  13 you -- yeah, I think that's it.</p> <p>14 A. Um-hum.</p> <p>15 Q. You had talked with Mr. Sisneros about  16 this proposed Abbott position on Medicare reform  17 and the process for sending it for approval  18 through the various Abbott divisions. Is that an  19 accurate summary of your earlier testimony?</p> <p>20 A. Yes.</p> <p>21 Q. Okay, and I believe you indicated that  22 the document was never approved; is that correct?</p>	<p>1 paper approved through Abbott; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And how did you find out that  4 the proposed Abbott position on Medicare reform  5 was not going to be approved?</p> <p>6 A. There were discussions with Public  7 Affairs, and then it was given back to the  8 Pharmaceutical Division.</p> <p>9 Q. And who was involved in the discussions  10 with Public Affairs?</p> <p>11 A. All I know is I was there.</p> <p>12 Q. Okay. Do you recall anyone else being  13 there?</p> <p>14 A. I cannot tell you who was there.</p> <p>15 Q. Okay. But do you recall anyone else  16 being there?</p> <p>17 A. Yes.</p> <p>18 Q. I'm not trying to trick you. I know  19 it's late in the day. You were not alone?</p> <p>20 A. I was not alone.</p> <p>21 Q. Okay, and was this discussion in  22 person?</p>
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<p>1 A. To the best of my knowledge, it was  2 never approved.</p> <p>3 Q. And when you said "the document," were  4 you referring to the "Proposed Abbott position on  5 Medicare reform"?</p> <p>6 A. Yes.</p> <p>7 Q. And that would be page 2 of Exhibit --  8 excuse me, pages 2 and 3 of Exhibit Miller 1169?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And what was your understanding  11 of why the proposed Abbott position on Medicare  12 reform was never approved?</p> <p>13 A. I was not in those discussions.</p> <p>14 Q. Regardless of whether you were in the  15 discussions, do you have an understanding of why  16 the proposed position on Medicare reform for  17 Abbott was never approved?</p> <p>18 A. I'd be speculating.</p> <p>19 Q. Okay. So the Medicare Working Group  20 created the position, and from Exhibit Miller  21 1169, it looks like you sent a memo to Ms. Boyd  22 proposing a process for getting the position</p>	<p>1 A. Yes.</p> <p>2 Q. And was there one discussion?</p> <p>3 A. I remember one discussion.</p> <p>4 Q. Do you remember any follow-up  5 discussions?</p> <p>6 A. No.</p> <p>7 Q. Okay, and what was -- what was the  8 content of the discussion, to the best of your  9 recollection?</p> <p>10 A. It dealt with the approval process, it  11 dealt with the pros and cons of taking the  12 position.</p> <p>13 Q. Okay, and who -- do you have an  14 understanding of who disliked the proposed  15 position on Medicare reform?</p> <p>16 A. No.</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 BY MS. FORD:</p> <p>19 Q. Was it your understanding that Public  20 Affairs was saying, We can't approve this?</p> <p>21 A. No.</p> <p>22 Q. Was it your understanding that the</p>

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<p style="text-align: right;">Page 262</p> <p>1 Pharmaceutical Products Division was not happy 2 with the proposal? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: I'd be speculating. 5 BY MS. FORD: 6 Q. Okay. I'm not trying to trick you 7 here. I'm just trying to figure out the Medicare 8 Working Group has gone to all this trouble, 9 you've generated this proposal, you've taken it 10 to various divisions to shop it around, and 11 somebody puts a quash on it, and -- 12 A. Well, and, you know, I'm not -- 13 MS. TABACCHI: Object to the form. 14 MR. SOFFER: Let's wait for a question. 15 THE WITNESS: Okay. 16 BY MS. FORD: 17 Q. And I'm just trying to understand to 18 the best of your recollection what happened in 19 this process to stop Abbott from putting for the 20 their proposal on Medicare reform? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: The last step that I can</p>	<p style="text-align: right;">Page 264</p> <p>1 THE WITNESS: I do not know. 2 MS. FORD: I think we're up to Exhibit 3 Miller 1170 now, so I'm going to mark this 4 document and introduce it. 5 (Exhibit Miller 1170 was marked 6 for ID) 7 BY MS. FORD: 8 Q. You can take a look at that. 9 A. (Witness reviewing document.) 10 Q. You're welcome to read the document in 11 its entirety, but for purpose of -- I'd happy to 12 point you to a specific area of the document -- 13 A. Go ahead. 14 Q. -- I wanted to ask you about. 15 A. Thank you. 16 Q. For the record, this is document ABT 17 53140 through ABT 53142. 18 A. Agreed. 19 Q. Do you recognize this document? 20 A. No. I mean it looks -- no. 21 Q. Okay, for the record, it's an internet 22 office correspondence dated December 13th, 1996</p>
<p style="text-align: right;">Page 263</p> <p>1 testify to that I know happened was the meeting 2 with Public Affairs. 3 BY MS. FORD: 4 Q. And if you were to meet with Public 5 Affairs, would that typically be with the head of 6 Public Affairs? 7 A. I do not recall. 8 Q. Okay. To your knowledge, was there 9 anything in particular about the proposal that 10 was objected to? 11 A. No. 12 Q. To your knowledge, did Abbott generate 13 another proposal on Medicare reform? 14 A. I do not know. 15 Q. Okay. So you weren't involved in any 16 process after this was disapproved to generate a 17 new proposal? 18 A. That is correct. 19 Q. Okay, do you if anyone was involved in 20 a process to generate a new Medicare reform 21 position on behalf of Abbott? 22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 265</p> <p>1 from Richard Rieger to members of the Medicare 2 Working Group, and you are copied on this 3 document. Is that correct? 4 A. That is correct. 5 Q. And do you believe that you would have 6 received this document in the ordinary course of 7 business? 8 A. Yes. 9 Q. Okay. About halfway down, it says, 10 "For next week's meeting, we would like to 11 propose the following agenda," and then the 12 second bullet point says, "Abbott's role in 13 future participation on the AMA/Industry Round 14 Table Steering Committee," and the third bullet 15 point says, "Next steps in further developing the 16 Abbott position re Medicare reform." 17 Did I read that accurately? 18 A. As stated. 19 Q. Do you recall attending the January 20 meeting of the Medicare Working Group? 21 A. I do not know. 22 Q. Okay. Do you recall attending a</p>

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<p>1 meeting of the Medicare Working Group where  2 Abbott's role in future participation in  3 AMA/Industry Round Table Steering Committee was  4 addressed?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: I do not know.</p> <p>7 BY MS. FORD:</p> <p>8 Q. Just so I make sure I understand, are  9 you saying you don't recall.</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay.</p> <p>12 A. I don't recall.</p> <p>13 MS. FORD: I'm going to mark Exhibit  14 Miller 1171, and I ask you to take a look at that  15 document.</p> <p>16 (Exhibit Miller 1171 was marked  17 for ID).</p> <p>18 THE WITNESS: (Witness reviewing  19 document.)</p> <p>20 MS. FORD: For the record, this is ABT  21 53217 through ABT 53238.</p> <p>22 BY MS. FORD:</p>	<p>1 A. Yes.</p> <p>2 Q. Do you recall in what context you've  3 heard of the Healthcare Leadership Council?</p> <p>4 A. I believe Mr. Burnham was on it at one  5 time.</p> <p>6 Q. And you're referencing Dwayne Burnham,  7 the CEO?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Do you know why members of the  10 Medicare Working Group would have been receiving  11 a copy of the Healthcare Leadership Council's  12 Principles For Effective Medicare Reform?</p> <p>13 A. The flippant answer is we distributed  14 it.</p> <p>15 Q. I'm sorry, I didn't hear you.</p> <p>16 A. The flippant answer is we distributed  17 it.</p> <p>18 Q. Okay. Do you have any idea why Mr.  19 Rieger would have distributed this to the members  20 of the Medicare Working Group?</p> <p>21 A. I'd be guessing.</p> <p>22 Q. To your knowledge, were any Abbott</p>
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<p>1 Q. Mr. Miller, do you recognize this  2 document?</p> <p>3 A. No.</p> <p>4 Q. It appears to be interoffice  5 correspondence from Richard Rieger dated February  6 10th, 1997 to the Medicare Working Group. Is  7 that correct?</p> <p>8 A. That's as stated.</p> <p>9 Q. As a member of the Medicare Working  10 Group, is it your expectation that you would have  11 received this document in the ordinary course of  12 business?</p> <p>13 A. Yes.</p> <p>14 Q. If you look at Item No. 1, it says,  15 "Attached are the following documents for your  16 review: No. 1) Healthcare Leadership Council  17 Principles For Effective Medicare Reform."</p> <p>18 Are you familiar with the Healthcare  19 Leadership Council?</p> <p>20 A. No.</p> <p>21 Q. Have you ever heard of that group  22 before?</p>	<p>1 employees or officers, aside from Mr. Burnham,  2 members of the Healthcare Leadership Council?</p> <p>3 A. I do not know.</p> <p>4 Q. To your knowledge, was there a group  5 within Abbott formed to develop Abbott's position  6 on Medicare reform prior to the Medicare Working  7 Group?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: I do not know.</p> <p>10 BY MS. FORD:</p> <p>11 Q. Okay. I'm going to show you a document  12 that's been previously marked in a prior  13 deposition as Plaintiffs' Exhibit 1121 and ask  14 you to take a look at that.</p> <p>15 A. (Witness reviewing document).</p> <p>16 MS. FORD: For the record, this is ABT  17 53263 through ABT 53275.</p> <p>18 BY MS. FORD:</p> <p>19 Q. Mr. Miller, this appears to be a  20 December 20th, 1996 interoffice correspondence  21 from Richard Rieger to members of the Medicare  22 Working Group; is that correct?</p>

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<p style="text-align: right;">Page 270</p> <p>1 A. As stated.    2 Q. And you are copied on this document; is    3 that correct?    4 A. Yes.    5 Q. Okay. And, again, in the ordinary    6 course of business, do you believe that you would    7 have received a copy of this document?    8 A. Yes.    9 Q. It says, "Attached is the information    10 that Mike Tootell referenced in our most recent    11 Medicare Working Group meeting and which he asked    12 me to circulate. It addresses the topic of    13 average wholesale prices and competitive    14 bidding."    15 Did I read that accurately?    16 A. As stated.    17 Q. Okay. If you could turn to Page 2 of    18 this exhibit?    19 A. (Witness so doing).    20 Q. It's titled, "Medicare Part B payment    21 for drugs average wholesale price issue." Is    22 that correct?</p>	<p style="text-align: right;">Page 272</p> <p>1 know.    2 BY MS. FORD:    3 Q. Okay. What was your understanding    4 around December of 1996 about the basis of -- for    5 which Medicare reimbursed for drugs?    6 MS. TABACCHI: Object to the form.    7 THE WITNESS: I'm not sure I knew the    8 specifics of any product.    9 BY MS. FORD:    10 Q. Okay. Did you understand around that    11 time period that reimbursement was based on    12 average wholesale price?    13 MS. TABACCHI: Object to the form.    14 THE WITNESS: I do not know.    15 BY MS. FORD:    16 Q. Okay. When you received a copy of this    17 document in or around December 20th of 1996,    18 would it have been your common practice to review    19 it?    20 A. It would have been my common practice    21 to read it, yes.    22 Q. If you look about halfway down the page</p>
<p style="text-align: right;">Page 271</p> <p>1 A. As stated.    2 Q. Okay, the first paragraph says,    3 "Currently, Medicare pays for those drugs that    4 are not reimbursed on a prospective payment basis    5 or a cost basis at the lesser of the average    6 wholesale price or the actual acquisition cost of    7 the drug. In actuality, however, Medicare pays    8 at the average wholesale price level because the    9 program has not acquired acquisition cost    10 information sufficient to establish reimbursement    11 rates."    12 Did I read that accurately?    13 A. As stated.    14 Q. Okay. Does this reflect your    15 understanding in or around December 20th, 1996    16 about how Medicare reimbursed for drugs?    17 MS. TABACCHI: Object to the form.    18 I'm sorry, did you say "reflect" or    19 "refresh"?    20 MS. FORD: Reflect.    21 MS. TABACCHI: Object to the form.    22 THE WITNESS: I'm going to say I don't</p>	<p style="text-align: right;">Page 273</p> <p>1 under the heading "Industry Options," it says,    2 "The industry can, of course, attempt to maintain    3 AWP as the payment measure for Medicare covered    4 drugs and resist all efforts within Congress and    5 HCFA to change the current formula and practice.    6 In all likelihood, that is not a sustainable    7 position, especially in light of the fraud and    8 waste connotations the investigators have brought    9 to this issue." Excuse me, "to the issue."    10 "In addition, numerous people from    11 within the industry have conceded publicly that    12 AWP makes little sense as a basis for    13 reimbursement. At the very least, it will be    14 difficult to make a strong case for the retention    15 of AWP as the determinator of Medicare payment    16 for drugs."    17 Did I read that accurately?    18 A. As stated.    19 Q. Okay. What was your understanding of    20 the purpose for distributing this document to    21 members of the Medicare Working Group?    22 A. As I've stated previously, all</p>

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<p>1 documents that were to be discussed were 2 distributed to all members.</p> <p>3 Q. Okay. And the cover member -- memo 4 says, "Attached is the information that Mike 5 Tootell referenced in our most recent Medicare 6 Working Group meeting and which he asked me to 7 circulate."</p> <p>8 That's correct, isn't it?</p> <p>9 A. That is as stated.</p> <p>10 Q. Okay. Do you recall a discussion of 11 AWP-based reimbursement and industry options in 12 your --</p> <p>13 A. No.</p> <p>14 Q. -- Medicare Working Group meeting?</p> <p>15 A. No.</p> <p>16 Q. To your knowledge, did the Medicare 17 Working Group adopt a position on reform efforts 18 for Medicare?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MS. FORD:</p> <p>22 Q. Okay. You would agree with me, though,</p>	<p>1 Q. Okay, well, Mr. Rieger's cover memo, 2 which you indicated you most likely received a 3 copy of and read, says that, "This is being 4 circulated, as referenced in the most recent 5 Medicare Working Group meeting."</p> <p>6 Does that lead you to believe that this 7 was a topic of discussion at a Medicare Working 8 Group meeting in or around December of 1996?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: I don't know who prepared 11 the attachment.</p> <p>12 BY MS. FORD:</p> <p>13 Q. Okay. But I'm not really asking about 14 who prepared the attachment.</p> <p>15 It -- the cover memo indicates that -- 16 that the attachment "is being circulated pursuant 17 to discussion that was held in a recent Medicare 18 Working Group meeting;" is that correct?</p> <p>19 A. That's what it says. I believe that -- 20 that's what it says.</p> <p>21 Q. Do you recall discussions of the 22 Medicare Working Group about proposals to change</p>
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<p>1 wouldn't you, that their -- the Medicare Working 2 Group was cognizant of this controversy around 3 AWP in -- in around December of '96?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MS. FORD:</p> <p>7 Q. And that at least some members of the 8 industry were opposed to changing reimbursement 9 system away from an AWP-based system; is that 10 correct?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I cannot speak for the 13 industry.</p> <p>14 BY MS. FORD:</p> <p>15 Q. I'm not asking you to speak for them. 16 I'm just asking if you had an understanding that 17 at least some members of the pharmaceutical 18 industry were opposed to moving away from an AWP- 19 based reimbursement system?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: I do not know.</p> <p>22 BY MS. FORD:</p>	<p>1 the reimbursement system away from AWP?</p> <p>2 A. I do not recall the specifics.</p> <p>3 Q. Okay. Regardless of whether you recall 4 the specifics of who said what and when, do you 5 recall a discussion of the topic generally?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MS. FORD:</p> <p>9 Q. Okay. Do you believe that was a topic 10 of discussion at more than one Medicare Working 11 Group meeting?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I do not recall.</p> <p>14 BY MS. FORD:</p> <p>15 Q. Okay. Do you also recall a discussion 16 of industry options in opposing a change away 17 from an AWP-based Medicare reimbursement system?</p> <p>18 MR. SOFFER: Objection, vague.</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 First would you mind re-reading the 21 question?</p> <p>22 (Record read.)</p>

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<p style="text-align: right;">Page 278</p> <p>1 MS. TABACCHI: Object to the form.    2 MS. FORD: One objection is sufficient.    3 MS. TABACCHI: Right.    4 MS. FORD: You already objected.    5 MS. TABACCHI: You can never have too    6 many objections.    7 THE WITNESS: Yes.    8 BY MS. FORD:    9 Q. Do you recall any specifics about the    10 particular options that were discussed?    11 A. The documents that you have already    12 shown me talk about a rebate-based system versus    13 AWP.    14 Q. Okay, do you recall any other options    15 that were discussed?    16 A. And we've talked about acquisition    17 cost, we've talked about actual cost.    18 Q. And did the Medicare Working Group come    19 to some consensus about what would be the best    20 alternative if the reimbursement system were    21 going to change?    22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 280</p> <p>1 was generated by the Medicare Working Group, did    2 the Medicare Working Group generate any other    3 policy statements?    4 A. No.    5 Q. Any other position papers?    6 A. No.    7 Q. To your knowledge, other than that    8 proposed policy statement and the minutes, did it    9 generate any other written documentation?    10 A. No.    11 MS. FORD: I'm getting an indication    12 from the videographer that we've got just a few    13 minutes left on the tape. So we'll go ahead and    14 take a break, and I'll find my next exhibit, and    15 we'll resume.    16 THE WITNESS: Okay.    17 THE VIDEOGRAPHER: We are off the    18 record at 3:57 at the end of Tape No. 4.    19 (Recess taken.)    20 THE VIDEOGRAPHER: We are back on the    21 record at 4:07 p.m. with the start of Tape No. 5.    22 BY MS. FORD:</p>
<p style="text-align: right;">Page 279</p> <p>1 THE WITNESS: I do not recall.    2 BY MS. FORD:    3 Q. We've talked generally about the    4 keeping of minutes for the Medicare Working    5 Group, but in addition to minutes, did you take    6 handwritten notes at the meetings you attended?    7 A. That was my general practice.    8 Q. Okay. And was it your general practice    9 to maintain those notes?    10 MS. TABACCHI: Object to the form.    11 THE WITNESS: I would give my notes to    12 Rich, and he would incorporate them in the    13 minutes of the meeting.    14 BY MS. FORD:    15 Q. Okay, and then do you know what    16 happened to your notes after that point?    17 A. No.    18 Q. So, to your knowledge, Mr. Rieger did    19 not give them back to you?    20 A. I do not recall.    21 Q. Okay. Other than the proposed Abbott    22 position on Medicare reform that you indicated</p>	<p style="text-align: right;">Page 281</p> <p>1 Q. Mr. Miller, could I ask you to take a    2 look at Exhibit Miller 1163, which you should    3 have in front of you? It's -- a March 7th, 1997    4 cover memo should be the first page of that    5 exhibit.    6 A. Exhibit Miller 1164. Exhibit Miller    7 1163?    8 Q. Correct.    9 A. Correct.    10 Q. And this is a document you discussed    11 with Mr. Sisneros earlier today. And the cover    12 page indicates -- the coverage page is from Mr.    13 Rieger, and it indicates that you drafted the    14 meeting minutes from the March 6th, 1997 meeting;    15 is that correct?    16 A. As stated.    17 Q. And then attached to that cover page    18 are the minutes that you drafted; is that    19 correct?    20 A. Correct.    21 Q. And under the first bullet point on ABT    22 52841, it says, "Changing the reimbursement price</p>

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<p style="text-align: right;">Page 282</p> <p>1 for drugs administered in physicians' offices 2 from AWP."</p> <p>3 Did I read that accurately?</p> <p>4 A. As stated.</p> <p>5 Q. Okay. And the first point under there 6 says, "Abbott/TAP has approximately \$900 million 7 in sales which would be affected by this proposal. 8 The two largest products are Lupron and 9 Calcijex."</p> <p>10 How -- what is your understanding of 11 how Abbott or TAP would have been affected by 12 changing reimbursement price for drugs 13 administered in physicians' offices from AWP?</p> <p>14 THE REPORTER: You know what? Can you 15 repeat the end of your question?</p> <p>16 MS. FORD: Sure.</p> <p>17 THE REPORTER: I'm sorry, I'm just 18 getting tired.</p> <p>19 BY MS. FORD:</p> <p>20 Q. What was your understanding of how 21 changing reimbursement price for drugs 22 administered in physicians' offices from AWP</p>	<p style="text-align: right;">Page 284</p> <p>1 THE WITNESS: I cannot answer the 2 question without you telling me how you're going 3 to change it.</p> <p>4 BY MS. FORD:</p> <p>5 Q. Okay. Well, at the time, in around 6 March 6th of 1997 --</p> <p>7 A. Um-hum.</p> <p>8 Q. -- President Clinton had a proposal to 9 change from AWP reimbursement to actual 10 acquisition cost. Do -- do you recall that 11 proposal?</p> <p>12 A. No, but go ahead.</p> <p>13 Q. Okay. So assume with me then, if the 14 change was going to be from AWP to actual 15 acquisition cost, how would such a change 16 negatively affect Abbott's sales?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: Without knowing the 19 number that was calculated for the actual 20 acquisition cost, I cannot answer it.</p> <p>21 BY MS. FORD:</p> <p>22 Q. Okay. Well, let me ask you, you wrote</p>
<p style="text-align: right;">Page 283</p> <p>1 would impact Abbott and/or TAP?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Any change could have 4 potentially affected the profitability of the two 5 products.</p> <p>6 BY MS. FORD:</p> <p>7 Q. Okay, so the \$900 million plus 8 reference is referring to a negative effect; is 9 that accurate?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: It's quantifying the 12 sales of the two products.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Sales that would be negatively impacted 15 --</p> <p>16 A. Yes.</p> <p>17 Q. -- is that accurate?</p> <p>18 Okay. And how is it -- if you could 19 explain to me your understanding of how a change 20 in reimbursement from AWP would affect Abbott's 21 sales?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 285</p> <p>1 these minutes on March -- the March 6th, 1997 2 meeting?</p> <p>3 A. Um-hum.</p> <p>4 Q. What were you referring to when you 5 said, "The change from reimbursement from AWP 6 could negatively impact Abbott/TAP sales by \$900 7 million"?</p> <p>8 A. No, no, no.</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: It does not say that.</p> <p>11 BY MS. FORD:</p> <p>12 Q. Okay. Why don't you go ahead and then 13 explain to me what bullet point one means and how 14 it would affect Abbott's sales?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: What the first paragraph 17 -- first stop point appears to say -- okay, I'm 18 going back -- is that we had \$900 million of 19 sales at that point in time on Lupron and 20 Calcijex, and that's all that's quantified in 21 that statement. There's no quantification of a 22 negative impact.</p>

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<p style="text-align: right;">Page 286</p> <p>1 BY MS. FORD:</p> <p>2 Q. Okay. Correct me if I'm wrong, but a 3 few minutes ago you said if there was going to be 4 an impact on Abbott's sales that you were 5 quantifying here, it would be a negative impact; 6 is that accurate?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 BY MS. FORD:</p> <p>9 Q. Let me ask it this way. Would you have 10 been concerned if there would have been an upside 11 to a change in AWP reimbursement?</p> <p>12 A. Yes.</p> <p>13 Q. Okay, and what would be the nature of 14 your concern?</p> <p>15 A. You'd have to quantify how it would 16 impact Abbott and then also impact its 17 competitors.</p> <p>18 Q. Okay. I guess let's step back and 19 speak a little more generally. How would any 20 change in reimbursement to providers from 21 Medicare affect a drug manufacturer such as 22 Abbott?</p>	<p style="text-align: right;">Page 288</p> <p>1 that they want to charge to providers; is that 2 accurate?</p> <p>3 A. Right.</p> <p>4 Q. So a change to reimbursement would not 5 impact the price at which Abbott sold its drugs, 6 would it?</p> <p>7 A. If a physician office does not recover 8 its cost, it's highly unlikely it's going to stay 9 in business or prescribe those products.</p> <p>10 Q. Okay, but would a change to the 11 reimbursement system affecting all of Medicare 12 single out Abbott and have a negative impact only 13 on Abbott?</p> <p>14 A. No.</p> <p>15 Q. Okay, so what I'm trying to understand 16 here is what you put under bullet point one of 17 your -- of the minutes that you drafted, that 18 "Abbott/TAP has approximately \$900 million in 19 sales which would be affected by this proposal." 20 What was your understanding of how 21 those sales would be affected by changing 22 reimbursement away from an AWP-based system?</p>
<p style="text-align: right;">Page 287</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: You -- I'd have to make a 3 generalization. You know, a reduction in price 4 is unfavorable generally. It could be positive 5 if volume increases more than price goes down.</p> <p>6 BY MS. FORD:</p> <p>7 Q. Was Abbott reimbursed directly by 8 Medicare?</p> <p>9 A. No.</p> <p>10 Q. Okay, so we're not talking about a 11 change in reimbursement that would affect Abbott 12 directly; is that accurate?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: These are products 15 administered in a doctor's office. It is my 16 understanding they do not get any other fees for 17 service except the product reimbursement.</p> <p>18 BY MS. FORD:</p> <p>19 Q. Okay, but Abbott manufacturers the 20 drug, right?</p> <p>21 A. Right.</p> <p>22 Q. And Abbott sets the price of that drug</p>	<p style="text-align: right;">Page 289</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: The perception was that 3 it would be negative to Abbott because it would 4 be a reduction to the total system revenues.</p> <p>5 BY MS. FORD:</p> <p>6 Q. And can you -- I'm going to try to get 7 you to connect those dots for me. The doctor 8 gets reimbursed less --</p> <p>9 A. Right.</p> <p>10 Q. -- if the reimbursement system is 11 changed away from AWP?</p> <p>12 A. Potentially.</p> <p>13 Q. Okay. And how is that going to impact 14 Abbott's sales?</p> <p>15 A. Again, the physician must make -- must 16 recover his cost, get an adequate return, or he's 17 in the going to stay in business.</p> <p>18 Q. Okay. So was the focus of Abbott's 19 concerns about physicians staying in business?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: It was on the total 22 revenue in that segment of business.</p>

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<p style="text-align: right;">Page 290</p> <p>1 BY MS. FORD:</p> <p>2 Q. And let's go on to bullet number two.</p> <p>3 "The implementation of a rebate system similar to</p> <p>4 Medicaid was discussed as a potential alternative</p> <p>5 to put forward. TAP believes that rebate system</p> <p>6 would have a larger negative impact on sales than</p> <p>7 changing to acquisition cost."</p> <p>8 Do you recall a discussion at the</p> <p>9 Medicare Working Group meeting on March 6th</p> <p>10 regarding --</p> <p>11 A. That was TAP's position.</p> <p>12 Q. Okay, do you recall who expressed --</p> <p>13 A. No.</p> <p>14 Q. -- that position at the meeting?</p> <p>15 A. No.</p> <p>16 Q. Do you recall anyone, aside from Mr.</p> <p>17 Campbell, who participated in Medicare Working</p> <p>18 Group meetings on behalf of TAP?</p> <p>19 A. I've answered that question. No.</p> <p>20 Q. Okay. So is it logical to assume that</p> <p>21 it was Mr. Campbell who was putting forth TAP's</p> <p>22 position?</p>	<p style="text-align: right;">Page 292</p> <p>1 BY MS. FORD:</p> <p>2 Q. And "acquisition cost plus" is in</p> <p>3 quotation marks.</p> <p>4 What was your understanding of what</p> <p>5 "acquisition cost plus" meant?</p> <p>6 A. I do not have an understanding.</p> <p>7 Q. Is it your testimony that when you</p> <p>8 drafted these minutes, you didn't have an</p> <p>9 understanding of what it meant or you don't</p> <p>10 recall it today?</p> <p>11 A. I don't recall it today.</p> <p>12 Q. Okay. Do you know whether this</p> <p>13 consensus was conveyed to anyone outside of the</p> <p>14 Medicare Working Group?</p> <p>15 A. I do not know.</p> <p>16 Q. Do you recall any discussions, for</p> <p>17 example, with your -- with your superior about</p> <p>18 this consensus?</p> <p>19 A. No.</p> <p>20 Q. Do you know whether Abbott took any</p> <p>21 actions to promote the acquisition cost plus</p> <p>22 alternative to AWP-based reimbursement?</p>
<p style="text-align: right;">Page 291</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 MR. SOFFER: Objection.</p> <p>3 BY MS. FORD:</p> <p>4 Q. Could it have been anyone else?</p> <p>5 MR. SOFFER: Objection.</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: I don't remember.</p> <p>8 BY MS. FORD:</p> <p>9 Q. Okay. And then the final point under</p> <p>10 this bullet is, "The group consensus was that</p> <p>11 'acquisition cost plus' would be the least</p> <p>12 favorable alternative to current Abbott/TAP</p> <p>13 business."</p> <p>14 Did I read that accurately?</p> <p>15 A. As stated.</p> <p>16 Q. And the acquisition --</p> <p>17 MS. THOMAS: Did you say "least</p> <p>18 favorable" or "least unfavorable"?</p> <p>19 MS. FORD: I meant to say "least</p> <p>20 unfavorable." I don't know what I said.</p> <p>21 THE WITNESS: That's what I heard.</p> <p>22 MS. FORD: Okay.</p>	<p style="text-align: right;">Page 293</p> <p>1 A. I do not know.</p> <p>2 Q. To your knowledge, did the Medicare</p> <p>3 Working Group take any steps to promote the</p> <p>4 acquisition cost plus alternative to AWP-based</p> <p>5 reimbursement?</p> <p>6 A. The Working Group did not.</p> <p>7 Q. Okay. Do you have an understanding of</p> <p>8 why members of the Medicare Working Group</p> <p>9 preferred the AWP-based reimbursement system to</p> <p>10 an alternative?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 MR. SOFFER: Objection.</p> <p>13 THE WITNESS: I would be speculating.</p> <p>14 BY MS. FORD:</p> <p>15 Q. Did the Medicare Working Group discuss</p> <p>16 it?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: My answer is all change</p> <p>19 is difficult.</p> <p>20 BY MS. FORD:</p> <p>21 Q. Okay. Was it your understanding that</p> <p>22 Abbott would prefer the reimbursement system to</p>

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<p>1 stay as it was at that time, AWP?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: I cannot speak for</p> <p>4 Abbott.</p> <p>5 BY MS. FORD:</p> <p>6 Q. Was it your understanding that members</p> <p>7 of the Medicare Working Group thought that</p> <p>8 maintaining the AWP-based reimbursement system</p> <p>9 would be preferable to Abbott?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 MR. SOFFER: Objection, calls for --</p> <p>12 THE WITNESS: Members of the Working</p> <p>13 Group expressed their opinion that AW -- staying</p> <p>14 with the current methods was preferable.</p> <p>15 BY MS. FORD:</p> <p>16 Q. And I believe you testified earlier</p> <p>17 that the Working Group was comprised of</p> <p>18 representatives of various Abbott divisions who</p> <p>19 had knowledge and/or expertise in reimbursement;</p> <p>20 is that correct?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: Yes.</p>	<p>1 any recollection of why you would ask Mr. Rieger</p> <p>2 to go verify this information?</p> <p>3 A. Yes. It was my nature.</p> <p>4 Q. Okay. So you would ask him to verify</p> <p>5 it just for your own peace of mind, perhaps?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you recall in fact whether</p> <p>8 this information was verified?</p> <p>9 A. I do not remember.</p> <p>10 Q. Do you recall any further action being</p> <p>11 taken with respect to your note here? After</p> <p>12 giving this over to Mr. Rieger, do you recall</p> <p>13 anything else happening --</p> <p>14 A. No.</p> <p>15 Q. -- with respect to this information?</p> <p>16 Mr. Miller, prior to preparing for your</p> <p>17 deposition or being contacted about your</p> <p>18 deposition, did you know that Abbott was being</p> <p>19 sued by the United States and by several states?</p> <p>20 MR. SOFFER: Objection, asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: I didn't know until</p>
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<p>1 BY MS. FORD:</p> <p>2 Q. If you could take a look at Exhibit</p> <p>3 Miller 1165, which you should have in front of</p> <p>4 you and which I believe are the handwritten</p> <p>5 notes, the one page of your handwritten notes?</p> <p>6 A. Oh, yes.</p> <p>7 Q. I believe that you testified earlier</p> <p>8 that you gave this information to Mr. Rieger to</p> <p>9 verify; is that correct?</p> <p>10 A. That's my recollection.</p> <p>11 Q. Okay. Do you recall if it was in fact</p> <p>12 verified?</p> <p>13 A. I do not know.</p> <p>14 Q. Okay, did you give any instructions to</p> <p>15 him about how to verify the information or how to</p> <p>16 go about trying to verify it?</p> <p>17 A. No.</p> <p>18 Q. If in fact the information was</p> <p>19 verified, did you have a plan to use it in some</p> <p>20 way?</p> <p>21 A. I do not remember.</p> <p>22 Q. Okay. Sitting here today, do you have</p>	<p>1 Abbott Legal called me and said, You got --</p> <p>2 you're getting a subpoena.</p> <p>3 BY MS. FORD:</p> <p>4 Q. So you hadn't read anything in</p> <p>5 newspapers about --</p> <p>6 A. No.</p> <p>7 Q. -- average wholesale price litigation?</p> <p>8 A. No.</p> <p>9 Q. So there were no discussions in the</p> <p>10 Medicare Working Group about investigations into</p> <p>11 Abbott's pricing practices that you recall?</p> <p>12 A. Wait, wait, wait, wait, wait. Let me -</p> <p>13 - let's go back.</p> <p>14 Q. Okay.</p> <p>15 A. What time period?</p> <p>16 Q. Well --</p> <p>17 A. Are we talking today or --</p> <p>18 Q. My first question was today.</p> <p>19 A. Okay.</p> <p>20 Q. And then I went back to the time period</p> <p>21 of the Medicare Working Group --</p> <p>22 A. Okay, fine.</p>

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<p>1     Q. -- and asked whether there were any  2 discussions of the Medicare Working Group about  3 at that point investigations into Abbott's  4 pricing practices.</p> <p>5     A. I do not recall.</p> <p>6     Q. Okay. I'm going to hand to you what's  7 been previously marked as Plaintiff's Exhibit  8 1124 and ask you to just briefly look it over.  9 I'll point you to -- direct you to a specific  10 question in the document so you don't have to  11 read it in full, but if you'd like to, we'll  12 certainly give you the time to do that.</p> <p>13    A. (Witness so doing).</p> <p>14    Q. For the record, this is ABT 52710  15 through ABT 52725. This is a -- this appears to  16 be an interoffice correspondence from Mr. Rieger  17 to members of the Medicare Working Group; is that  18 correct?</p> <p>19    A. That's what it states.</p> <p>20    Q. Okay, and you again are copied on this  21 interoffice correspondence?</p> <p>22    A. Yes.</p>	<p>1     A. No.</p> <p>2     Q. Okay.</p> <p>3     A. But it's in one of the other  4 attachments, but -- before.</p> <p>5     Q. Okay. And I believe it's in one of the  6 other attachments that was made an exhibit here  7 today; is that right?</p> <p>8     A. That's correct.</p> <p>9     Q. And you indicated in response to Mr.  10 Sisneros, that being a one-page article, you  11 probably -- it would have been your practice to  12 review it. Is that accurate?</p> <p>13    A. It would have been my practice to read  14 it, yes.</p> <p>15    Q. Okay. Before I ask you specific  16 questions about this document, we had talked  17 about whether you're aware of investigations or  18 lawsuits related to Abbott's pricing practices;  19 is that accurate?</p> <p>20    A. Yes.</p> <p>21    Q. Okay, and you said that at least but  22 not prior to -- prior to being contacted about</p>
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<p>1     Q. It says, "F.Y.I. Attached is updated  2 information that I received from Cindy Sensibaugh  3 in preparation for the 1/21/97 Medicare Working  4 Group meeting."</p> <p>5     Did I read that accurately?</p> <p>6     A. As stated.</p> <p>7     Q. Okay. And, again, under the ordinary  8 course of business, do you believe that you would  9 have received a copy of this cover memorandum and  10 attachments?</p> <p>11    A. Yes.</p> <p>12    Q. Okay, and do you believe that you would  13 have reviewed this at least briefly in  14 preparation for the meeting?</p> <p>15    A. I don't know.</p> <p>16    Q. Okay. Well, let me ask you to turn to  17 page 3, which is ABT 52712.</p> <p>18    A. This is our -- okay.</p> <p>19    Q. This is dated January 13th, 1997 and  20 it's titled, "F.D.C reports -- 'The Pink Sheet.'"</p> <p>21    Do you recall seeing this document  22 before?</p>	<p>1     your deposition, you were not aware of any such  2 investigations or lawsuits; is that accurate?</p> <p>3     A. As it relates to this.</p> <p>4     Q. To pricing practices --</p> <p>5     A. Yes.</p> <p>6     Q. -- in average wholesale price, for  7 example?</p> <p>8     Aside from Abbott, were you aware of  9 any other pharmaceutical manufacturers being  10 investigated related to pricing issues?</p> <p>11    MS. TABACCHI: Object to the form.</p> <p>12    THE WITNESS: No.</p> <p>13  BY MS. FORD:</p> <p>14    Q. Do you recall any discussions in the  15 Medicare Working Group about investigations of  16 pharmaceutical manufacturers relating to their  17 pricing practices?</p> <p>18    A. I do not recall any.</p> <p>19    Q. Okay. If you'd look about halfway down  20 the page, there's a sentence which is indented  21 about one inch on each side and it's in bold, and  22 it says, "The federal government is also</p>

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<p style="text-align: right;">Page 302</p> <p>1 investigating payment rates for covered 2 outpatient drugs under Medicare and the 3 relationship of AWP to actual pharmacy cost." 4 A. ". . .outpatient drugs under Medicare." 5 Q. Does that refresh your recollection 6 about discussions during this time period, again, 7 December -- late December, early -- late December 8 of '96 or early '97 about investigations into 9 pricing issues or average wholesale price? 10 A. I don't know how this relates to 11 Abbott. 12 Q. I'm not asking in relationship to 13 Abbott. 14 A. Oh. 15 Q. I'm saying does it refresh your 16 recollection of general discussion or awareness 17 of investigations in the late '96, early '97 time 18 period? 19 A. My answer is it did not relate to my -- 20 to Abbott, so I didn't -- I might have read it, 21 but it didn't register. 22 Q. Okay, and then the second paragraph on</p>	<p style="text-align: right;">Page 304</p> <p>1 Again, does that refresh your 2 recollection about any investigations ongoing in 3 late '96, early '97 in the pharmaceutical 4 industry? 5 A. No. 6 Q. At any point in time did you become 7 aware of any government investigations into TAP's 8 marketing or sales practices? 9 A. Yes. 10 Q. And about when did that occur? 11 A. In the 1990s, they were accused. 12 Q. And do you recall how you became aware 13 of the investigation into TAP's marketing and 14 sales practices? 15 A. I assume via the newspaper. 16 Q. Was it a discussion at any Medicare 17 Working Group meetings that you can recall? 18 A. No. 19 Q. I'm going to focus now on the latter 20 part of your tenure at Abbott, so let's say from 21 about 1996 through 2003. 22 And do I understand correctly that from</p>
<p style="text-align: right;">Page 303</p> <p>1 the bottom, it says, "The Department of Justice 2 is also pursuing an antitrust investigation of 3 how AWP is calculated. The DOJ is understood to 4 be requesting information from drug companies. 5 The prescription drug price reference lists Red 6 Book, First DataBank's Price Alert, and Medi-Span 7 say they have not been contacted by DOJ to say 8 how their prices are determined." 9 Did I read that accurately? 10 A. That's as stated. 11 Q. Were you aware of this effort on the 12 part of DOJ to investigate AWP and how it was 13 calculated by drug manufacturers? 14 A. No. 15 Q. Okay. And then, finally, the 16 concluding paragraph on that page says, "The DOJ 17 inquiry is understood to stem at least in part 18 from drug pricing information provided by a home 19 infusion and nutritional service provider 20 involved in a separate investigation by the 21 General Accounting Office that had assembled 22 Medicare and drug pricing data."</p>	<p style="text-align: right;">Page 305</p> <p>1 that period, 1996 to 1998, you were the 2 Divisional Vice President for Corporate Planning? 3 A. Yes. 4 Q. And following that, Divisional Vice 5 President for E-Commerce? 6 A. Yes. 7 Q. And during that time period, 1996 to 8 2003, do you recall receiving any document called 9 "memoranda" related to investigations of Abbott? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: No. 12 BY MS. FORD: 13 Q. And let me ask you more generally. Do 14 you know what I'm speaking of? 15 A. Yes. Oh, yes, yes. 16 Q. Okay, and so we're on the same page, do 17 you understand me to be speaking about a 18 memorandum or some communication that would come 19 to you and say there's either an investigation or 20 a lawsuit and you're not to destroy documents and 21 you may be asked to collect them and provide them 22 to the Legal Department?</p>

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<p style="text-align: right;">Page 306</p> <p>1 A. Yes.</p> <p>2 Q. We have the same understanding about</p> <p>3 that?</p> <p>4 A. We have a common understanding.</p> <p>5 Q. So you don't recall anything between</p> <p>6 the 1996 to 2003 time period, any such document</p> <p>7 called "memoranda" coming your way?</p> <p>8 A. I got to answer it this way. I took no</p> <p>9 files from Corporate Planning when I left and</p> <p>10 went to my next assignment.</p> <p>11 Q. Okay. And prior to leaving Corporate</p> <p>12 Planning, do you recall receiving an instruction</p> <p>13 to preserve documents?</p> <p>14 A. No.</p> <p>15 Q. Okay. And when you left Corporate</p> <p>16 Planning to go to E-Commerce, what did you do</p> <p>17 with your files?</p> <p>18 A. Left them in the office.</p> <p>19 Q. Okay. And what happened to your</p> <p>20 computer, if you know?</p> <p>21 A. My computer? I think I took it with</p> <p>22 me.</p>	<p style="text-align: right;">Page 308</p> <p>1 from Corporate Development for him -- for your</p> <p>2 predecessor, whoever that may have been?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 BY MS. FORD:</p> <p>5 Q. Or I should say your successor, excuse</p> <p>6 me.</p> <p>7 A. Yeah.</p> <p>8 Q. The other would have been a little bit</p> <p>9 hard to do.</p> <p>10 Do you recall having your assistant</p> <p>11 make copies of any records and say, Leave these</p> <p>12 for my successor, he may need them when he gets</p> <p>13 here?</p> <p>14 A. I would have purged dead files --</p> <p>15 Q. Okay.</p> <p>16 A. -- you know, things we assumed we'd</p> <p>17 never go back into, business analysis.</p> <p>18 Q. Would that have included the Medicare</p> <p>19 Working Group? Was that a dead file by 1998?</p> <p>20 A. I left in '97. Oh, I left December</p> <p>21 '98. I left -- I do not -- I do not re -- I don't</p> <p>22 know.</p>
<p style="text-align: right;">Page 307</p> <p>1 Q. Okay. And would you have also taken</p> <p>2 with you the -- the working files that you had</p> <p>3 generated during your 1996 to '98 time period in</p> <p>4 Corporate Planning?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. Did someone replace you in your</p> <p>7 position as Divisional Vice President for</p> <p>8 Corporate Planning?</p> <p>9 A. Yes.</p> <p>10 Q. And who was that?</p> <p>11 A. I don't know the gentleman's name. I</p> <p>12 would -- or I should say I don't recall his name.</p> <p>13 Q. Okay. Was there any time period that</p> <p>14 you two overlapped?</p> <p>15 A. No.</p> <p>16 Q. Was there any effort on your part to</p> <p>17 transition between the two of you for that --</p> <p>18 A. No.</p> <p>19 Q. -- position?</p> <p>20 A. There was a gap.</p> <p>21 Q. Okay. Do you recall taking it --</p> <p>22 taking any efforts to prepare your working files</p>	<p style="text-align: right;">Page 309</p> <p>1 Q. Okay, and remind me again, what month</p> <p>2 did you leave in '98?</p> <p>3 A. Oh, God. I say December '98 --</p> <p>4 Q. Okay.</p> <p>5 A. -- but I'm not positive, you know.</p> <p>6 Q. And do you recall making any attempts</p> <p>7 to transfer information that was on your computer</p> <p>8 to save for the person who was going to be in</p> <p>9 that position?</p> <p>10 A. I'm not -- let me go back. I'm not --</p> <p>11 I cannot say for certainty that I took it or did</p> <p>12 not take it.</p> <p>13 Q. Okay.</p> <p>14 A. I just don't -- I mean I don't know.</p> <p>15 Q. Okay. Regardless of whether you took</p> <p>16 your computer or you didn't, do you recall doing</p> <p>17 anything with the information on the computer to</p> <p>18 preserve or provide that to your successor?</p> <p>19 A. No.</p> <p>20 Q. So I take it that, since you weren't</p> <p>21 aware of any investigations into Abbott's pricing</p> <p>22 practices, that you weren't aware of a simple</p>

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<p>1 investigative demand issued by the Office of  2 Inspector General of the Department of Health and  3 Human Services in 1996; is that -- is that a fair  4 --</p> <p>5 A. That is fair.</p> <p>6 Q. -- assessment?</p> <p>7 Okay. And, similarly, were you aware  8 of a subpoena by the Department of Health and  9 Human Services issued to Abbott in 1997 for  10 documents?</p> <p>11 A. No.</p> <p>12 MS. FORD: Okay. Would you all mind if  13 we take a five-minute break and --</p> <p>14 MS. TABACCHI: And rest?</p> <p>15 THE VIDEOGRAPHER: We are off the  16 record at 4:38 p.m.</p> <p>17 (Recess taken.)</p> <p>18 THE VIDEOGRAPHER: We are back on the  19 record at 4:48 p.m.</p> <p>20 MS. THOMAS: Good afternoon, Mr.  21 Miller.</p> <p>22 THE WITNESS: Good afternoon.</p>	<p>1 your answer to that, you noted that you know this  2 from personal experience. And I wanted to know,  3 please, if you could describe for us what  4 personal experience you were referring to?</p> <p>5 A. My mother, Medicare Part D.</p> <p>6 Q. Could you explain that?</p> <p>7 A. Yeah.</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 You're asking him to explain Medicare  10 Part D?</p> <p>11 MS. THOMAS: Yes, absolutely. He'll do  12 it briefly, I'm sure.</p> <p>13 THE WITNESS: Drugs that are -- when  14 patients go to the doctor, if the -- if the drug  15 is reimbursed, they are much more willing to take  16 that drug than if it's not reimbursed and they  17 have to take it -- pay for it out of their own  18 pocket.</p> <p>19 BY MS. THOMAS:</p> <p>20 Q. You also testified in response to a  21 question by Ms. Ford that any change in  22 reimbursement could affect the profitability of a</p>
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<p>1 MS. THOMAS: I introduced myself  2 earlier, but I will again, Susan Schneider  3 Thomas. I am an attorney representing the  4 Relator, Ven-a-Care of the Florida Keys, who was  5 involved in the California and federal  6 litigations as well as the litigation brought by  7 the State of Texas.</p> <p>8 I will try even harder, since I'm  9 third, to avoid repeating, although you may not  10 think so at first because my questions will  11 relate to some of the same documents, but they  12 will be limited.</p> <p>13</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MS. THOMAS:</p> <p>16 Q. If you would, sir, earlier today you  17 testified in response to one of Mr. Sisneros's  18 questions talking about if a product is not  19 reimbursed, it's generally not prescribed. Do  20 you vaguely recall that testimony?</p> <p>21 A. I recall.</p> <p>22 Q. Okay, and in part, in elaborating on</p>	<p>1 product. Do you recall that testimony?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Could you explain whose  4 profitability you were referring to? Was that  5 from Abbott's perspective?</p> <p>6 A. Anybody in the chain.</p> <p>7 Q. From Abbott's perspective, could you  8 explain how a change in reimbursement methodology  9 could affect the profitability of one of Abbott's  10 drugs?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: That question's been  13 answered, I think, but I'll go back again.</p> <p>14 Basically, if it's a drug in the --  15 I'll use a drug in a physician office as an  16 example. If the only reimbursement that physician  17 gets is the AWP of that drug, and that's reduced  18 enough, that doctor will not do that -- continue  19 that business or he'll find alternative  20 therapies.</p> <p>21 BY MS. THOMAS:</p> <p>22 Q. And that affects the profitability of</p>

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<p style="text-align: right;">Page 314</p> <p>1 the product for Abbott in what manner?</p> <p>2 A. Abbott may not -- its -- Abbott's sales</p> <p>3 may go down.</p> <p>4 Q. If you would look, please, back at</p> <p>5 Exhibit Miller 1163 --</p> <p>6 A. Exhibit Miller 1163.</p> <p>7 Q. And, to your knowledge, by the way,</p> <p>8 when you refer to the fact that Abbott's sales</p> <p>9 may go down, is that a concept that was discussed</p> <p>10 in the Medicaid -- in the Medicare Working Group?</p> <p>11 MS. TABACCHI: Objection form.</p> <p>12 MR. SOFFER: Objection, vague.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MS. THOMAS:</p> <p>15 Q. And is that how you came to that</p> <p>16 understanding or was it just more or less a</p> <p>17 matter of common sense for you to understand</p> <p>18 that?</p> <p>19 A. It's common sense for me.</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MS. THOMAS:</p> <p>22 Q. On Exhibit Miller 1163, if you would</p>	<p style="text-align: right;">Page 316</p> <p>1 office.</p> <p>2 Q. But when it says "would be affected by</p> <p>3 this proposal," what is "the proposal"?</p> <p>4 A. It could potentially be impacted by a</p> <p>5 change in Medicare pricing.</p> <p>6 Q. Okay. And was the proposal that was</p> <p>7 being discussed here, as I believe has been</p> <p>8 talked about at length today, a possible change</p> <p>9 from AWP-based reimbursement to acquisition-cost-</p> <p>10 based reimbursement?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I think there were --</p> <p>13 that was one of the proposals.</p> <p>14 BY MS. THOMAS:</p> <p>15 Q. And do you believe that's the proposal</p> <p>16 that you were referring to when you said "would</p> <p>17 be affected by this proposal" --</p> <p>18 A. I do not --</p> <p>19 Q. -- in the paragraph?</p> <p>20 A. I do not recall.</p> <p>21 Q. And if you could look, sir, please at</p> <p>22 Exhibit Miller 1164 and Exhibit Miller 1165?</p>
<p style="text-align: right;">Page 315</p> <p>1 look at page 2, Abbott 52841?</p> <p>2 A. (Witness so doing).</p> <p>3 Q. Under the bullet point "Changing the</p> <p>4 reimbursement price," there's the first paragraph</p> <p>5 that talks about the 900,000 million in sales</p> <p>6 that would be affected, and then there's the</p> <p>7 second paragraph talking about the rebate system,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. You probably almost know these by heart</p> <p>11 at this point.</p> <p>12 The first part of that is referring to</p> <p>13 what would happen if there was a change from an</p> <p>14 AWP-based reimbursement to an acquisition cost</p> <p>15 reimbursement system, correct?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MS. THOMAS:</p> <p>19 Q. What is the first point talking about?</p> <p>20 A. The first stop point only states the</p> <p>21 sales value of two products, well, or products</p> <p>22 and that Abbott and TAP sell in the physician</p>	<p style="text-align: right;">Page 317</p> <p>1 A. (Witness so doing).</p> <p>2 Q. If you look at your handwritten note,</p> <p>3 which is Exhibit Miller 1165, and you look at the</p> <p>4 minutes from the Medicare Working Group meeting</p> <p>5 on 1/21/97, which is the beginning of the second</p> <p>6 page of Exhibit Miller 1164, the discussion under</p> <p>7 "Average Wholesale Price" in the minutes more or</p> <p>8 less tracks your handwritten notes, does it not?</p> <p>9 A. The same subject matter is there.</p> <p>10 Q. And it kind of goes through the</p> <p>11 different points that Medicare is based on the</p> <p>12 AWP and the payment is 80% of AWP and the</p> <p>13 reference to AWP as the manufacturer's price plus</p> <p>14 a markup of 15 to 20%, which in your handwritten</p> <p>15 notes appears to be expressed as "AWP equals</p> <p>16 acquisition cost plus 20 to 25%."</p> <p>17 Do they seem to be fairly parallel</p> <p>18 concepts to you?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: The same points are in</p> <p>21 both documents.</p> <p>22 BY MS. THOMAS:</p>

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<p style="text-align: right;">Page 318</p> <p>1 Q. Okay. And it was talked about a little    2 bit earlier, but I'm wondering if you would    3 please reread the second bullet point under    4 "Average Wholesale Price" in those minutes? If    5 you would just read that to yourself, "The    6 Medicare pays 80%"?</p> <p>7 A. (Witness so doing).</p> <p>8 Okay.</p> <p>9 Q. Do you understand from this or did you    10 believe that the minutes from the Medicare    11 Working Group were attempting to explain that it    12 is the co-pay, the 20% co-pay that is paid by the    13 patient or the Medigap carrier that provides the    14 provider's profit?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: That's --</p> <p>17 BY MS. THOMAS:</p> <p>18 Q. Let me ask you this way. You are, I    19 believe, a self-proclaimed numbers guy. Could    20 you explain what this paragraph is trying to say?</p> <p>21 A. The answer is no, but I will tell from    22 you my personal experience this is not consistent</p>	<p style="text-align: right;">Page 320</p> <p>1 Q. And by "our sales," you're referring to    2 Abbott's home care business?</p> <p>3 A. Yes.</p> <p>4 Q. And these are sales to whom?</p> <p>5 A. Medicare, Medicaid, private insurance.</p> <p>6 Q. Sales to them or sales to people that    7 are covered by those programs?</p> <p>8 A. Sales to people who are covered by    9 those programs. We billed on behalf of the    10 patient.</p> <p>11 Q. And 30% of what was deemed    12 uncollectable, the co-pay or --</p> <p>13 A. The total sales.</p> <p>14 Q. So medicines that were provided to    15 patients who were Medicare or Medicaid recipients    16 were what, not reimbursed by Medicare/Medicaid at    17 approximately 30% of those total sales?</p> <p>18 A. Yes.</p> <p>19 Q. Did you come to some understanding of -    20 - as to why that was?</p> <p>21 A. That was -- the industry trend was over    22 20%. It's published.</p>
<p style="text-align: right;">Page 319</p> <p>1 with the market.</p> <p>2 Q. So it's essentially your understanding    3 that the way this paragraph is written is not    4 accurate?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Based on Abbott's    7 experience in the home care business, it is not    8 accurate.</p> <p>9 BY MS. THOMAS:</p> <p>10 Q. And what experience are you referring    11 to, sir?</p> <p>12 A. Abbott was in the home care business    13 '83, '84, I believe. I'm going from memory.    14 Maybe '84, '85.</p> <p>15 Q. And what knowledge did you obtain from    16 that Abbott experience that allows you to    17 conclude that this is not an accurate statement    18 here in the minutes?</p> <p>19 A. 30% -- 30% of our sales were    20 uncollectable.</p> <p>21 Q. Can you explain what that means?</p> <p>22 A. We wrote them off as bad debt expense.</p>	<p style="text-align: right;">Page 321</p> <p>1 Q. But why was that? I mean what was the    2 explanation for Medicare, Medicaid or other    3 third-party payers not paying --</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 BY MS. THOMAS:</p> <p>6 Q. (Continuing) -- for approximately 30%?</p> <p>7 A. I do not know.</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: Objection.</p> <p>10 BY MS. THOMAS:</p> <p>11 Q. You never had heard an explanation for    12 that?</p> <p>13 A. (Witness shaking head.)</p> <p>14 MS. TABACCHI: Mr. Miller, you need to    15 answer audibly.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MS. THOMAS:</p> <p>18 Q. How did you obtain any understanding    19 from Abbott's home care business? Had you been    20 involved in that business?</p> <p>21 A. I was the division controller.</p> <p>22 Q. That's right. You said that earlier.</p>

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<p style="text-align: right;">Page 322</p> <p>1        If you would look down a couple of    2 bullet points to the new heading "Lupron"? It's    3 on the same page of the minutes, 52706.    4        A. Yes.    5        Q. And it says, "In two states, an    6 acquisition cost strategy was implemented, which    7 caused serious problems for Abbott. Since the    8 providers were being reimbursed at 80% of the    9 acquisition cost (which is 15 to 20% lower than    10 AWP) the providers were losing all of their    11 profit."    12        Do you see where I was reading?    13        A. As stated.    14        Q. Okay. Do you have any recollection of    15 discussing that in a Medicare Working Group    16 meeting?    17        A. This is as was reported by TAP.    18        Q. Do you recall whether the issue had to    19 do with a payer refusing to provide coverage or    20 reimbursement at all for Lupron versus lowering    21 the reimbursement for Lupron?    22        A. I do not recall.</p>	<p style="text-align: right;">Page 324</p> <p>1        A. No.    2        MS. TABACCHI: Object to the form.    3        BY MS. THOMAS:    4        Q. And in the second sentence, when it    5 refers to "the providers losing all of their    6 profit," do you understand what that refers to?    7        A. No.    8        Q. Sir, did you have any involvement in    9 about 2000 or 2001 with a multi-product list    10 price change that was engaged in by Abbott?    11        MS. TABACCHI: Object to the form.    12        THE WITNESS: No.    13        BY MS. THOMAS:    14        Q. Do you ever recall hearing, whether    15 from your work at Abbott or in the public press,    16 of an effort undertaken by Abbott in that time    17 period to change its reported prices for a wide    18 range of its products?    19        MS. TABACCHI: Object to the form.    20        THE WITNESS: No.    21        BY MS. THOMAS:    22        Q. You lived in or about Chicago at that</p>
<p style="text-align: right;">Page 323</p> <p>1        MS. TABACCHI: Object to the form.    2        MR. SOFFER: Objection.    3        BY MS. THOMAS:    4        Q. When it makes reference to "an    5 acquisition cost strategy," what do you    6 understand that to be?    7        A. I do not recall.    8        Q. In the context of all of the discussion    9 and documents that have been talked about today,    10 do you understand that to refer to a    11 reimbursement methodology that is based on    12 acquisition cost rather than AWP?    13        MS. TABACCHI: Object to the form.    14        THE WITNESS: I do not have a    15 definition for action -- acquisition cost    16 strategy.    17        BY MS. THOMAS:    18        Q. Do you have any understand what that's    19 referring to or can --    20        A. No.    21        Q. Can you derive an understanding by    22 reading that paragraph?</p>	<p style="text-align: right;">Page 325</p> <p>1        point in time, 2000, 2001?    2        A. Yes, ma'am.    3        Q. Okay, and you don't recall seeing    4 anything even in the public press about Abbott    5 changing its prices?    6        MS. TABACCHI: Object to the form.    7        THE WITNESS: No.    8        BY MS. THOMAS:    9        Q. And you don't recall hearing anything    10 at work about that?    11        A. No.    12        Q. Okay. You testified earlier when you    13 were asked about the establishment of the    14 Medicare Working Group that one of the things you    15 did at the outset was you looked at the processes    16 for getting reimbursement or coverage in various    17 divisions, and you mentioned that the different    18 divisions had limited similarities in terms of    19 how products are approved or reimbursed.    20        Do you generally remember that    21 testimony?    22        A. I do.</p>

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<p style="text-align: right;">Page 326</p> <p>1 Q. Could you explain, sir, in more detail 2 what you did to ascertain how products got 3 approved or the reimbursement methodology in the 4 various Abbott divisions?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: There were discussions 7 with the representatives on what government 8 agencies approved their products.</p> <p>9 BY MS. THOMAS:</p> <p>10 Q. To the best of your recollection, was 11 this an oral discussion at a meeting?</p> <p>12 A. Yes.</p> <p>13 Q. Did you get any type of reports from 14 the various divisions?</p> <p>15 A. No.</p> <p>16 Q. And you -- you indicated that you 17 learned that the products in the different 18 divisions had limited similarities in terms of 19 approval or reimbursement?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. So you just noted that there 22 were discussions with representatives about what</p>	<p style="text-align: right;">Page 328</p> <p>1 who our customers were among the divisions. We 2 had very little overlap of customers.</p> <p>3 BY MS. THOMAS:</p> <p>4 Q. And what is the connection between who 5 the customers are and the reimbursement 6 methodology, as you understood it?</p> <p>7 A. Tried to identify if a business risk 8 opportunity would affect more than one division.</p> <p>9 Q. Would that apply, say, to trying to 10 understand whether a change in Medicare or 11 Medicaid reimbursement methodology would impact 12 across divisions for Abbott?</p> <p>13 A. That is correct.</p> <p>14 Q. And did you learn anything about the 15 different divisions that led you to conclude that 16 there were similar concerns across the divisions 17 about changes specifically in Medicare or 18 Medicaid reimbursement methodology?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: There was limited sales 21 of products to common customers.</p> <p>22 BY MS. THOMAS:</p>
<p style="text-align: right;">Page 327</p> <p>1 government agencies approved their products. 2 How did you learn about how products 3 were reimbursed in the different divisions?</p> <p>4 A. Same discussion.</p> <p>5 Q. And do you have any recollection of 6 what you learned about reimbursement methodology 7 as you embarked on this Medicare Working Group 8 project?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: It was more a discussion 11 of who is your customer and who pays your 12 customer.</p> <p>13 BY MS. THOMAS:</p> <p>14 Q. Why was it important to know who the 15 customers were?</p> <p>16 A. I was looking for potential for 17 synergies among the divisions.</p> <p>18 Q. And what you found instead was that 19 there were differences from a reimbursement 20 perspective among the divisions at Abbott?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: There were differences in</p>	<p style="text-align: right;">Page 329</p> <p>1 Q. And what is the significance of that, 2 if any, to concerns about reimbursement 3 methodology or the impact of Medicaid/Medicare 4 reimbursement methodology?</p> <p>5 A. If you have a common customer, I assume 6 you have a common payer.</p> <p>7 Q. So when you're referring to the 8 differences in customers, are you saying that the 9 ultimate users of the drug product were 10 reimbursed by -- were covered by different third- 11 party payers depending upon who Abbott's direct 12 customers were?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I'm confused.</p> <p>15 BY MS. THOMAS:</p> <p>16 Q. You've indicated that you've learned 17 that the different divisions had different 18 customers?</p> <p>19 A. (Witness nodding.)</p> <p>20 Q. And I'm asking if you could explain why 21 that is of significance in evaluating possible 22 changes in Medicare or Medicare reimbursement</p>

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<p>1 methodology?</p> <p>2 A. Let's take an example.</p> <p>3 Q. Okay.</p> <p>4 A. The drugs dispensed in the doctor's office, there were only two drugs mentioned in the memos among all the divisions and including the joint venture TAP. So there's not a lot of overlap. So any change to reimbursement for the doctor's office would affect two groups.</p> <p>10 Q. How about drugs other than physician-administered drugs, drugs that are dispensed by pharmacies?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 MR. SOFFER: Objection.</p> <p>15 BY MS. THOMAS:</p> <p>16 Q. Did Abbott have any drugs like that that were subject to Medicare or Medicaid coverage?</p> <p>19 A. I do not know.</p> <p>20 Q. Do you ever recall any discussion of drugs other than those few physician-administered drugs that you referenced?</p>	<p>1 1121?</p> <p>2 Q. Yes.</p> <p>3 A. Got it.</p> <p>4 Q. And the cover memo refers to information -- and I'm not going to pronounce the guy's name any better. How do you pronounce his name?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay. (Continuing) -- Mike Tootell, that he asked Mr. Rieger to circulate, and it attaches two different articles. And I'm wondering, sir, if you would look to the first one, the Medicare Part B payment for drugs?</p> <p>14 A. (Witness so doing).</p> <p>15 Q. Do you know anything about that document, i.e., who generated it, where it came from?</p> <p>18 A. No, ma'am.</p> <p>19 Q. Do you have any idea if that's an Abbott document?</p> <p>21 A. I have no idea.</p> <p>22 Q. If you would look in the second</p>
<p>1 A. I do not recall.</p> <p>2 Q. Do you recall any discussion with the division representative from the HPD about differences among the sort of subgroups of HPD in terms of Medicare/Medicaid reimbursement?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MS. THOMAS:</p> <p>9 Q. Did you learn anything about alternate site and its relationship to Medicare or Medicaid reimbursement?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: Alternate site was never discussed in the Medicare meetings, to the best of my knowledge.</p> <p>16 BY MS. THOMAS:</p> <p>17 Q. If you would look back, please, at the exhibit that was handed to you earlier that was previously marked as Plaintiff's Exhibit 1121? It's the December 20th, 1996 memo with attachments.</p> <p>22 A. Bear with me. Oh, Plaintiff's Exhibit</p>	<p>1 paragraph, sir, where it -- which starts, "There have been several studies," and then it talks about, "The common conclusion of these efforts is that the use of AWP as a payment measure results in excessive reimbursement."</p> <p>6 Do you remember discussing that issue at any of the Medicare Working Group meetings?</p> <p>8 A. Repeat the question, please.</p> <p>9 Q. Do you remember discussing the issue of excessive reimbursement due to AWP-based reimbursement?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MS. THOMAS:</p> <p>15 Q. And then the next sentence, sir, reads, "In other words, there is some evidence that often the AWP for a drug is set at a particular level to establish third-party reimbursement, but has no relevance to any party beyond the third-party payer."</p> <p>21 Do you see that sentence?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">Page 334</p> <p>1 Q. Do you have any understanding what that 2 is referring to, sir?</p> <p>3 A. As I stated previously, I don't know 4 where -- who prepared this document.</p> <p>5 Q. Did you have any understanding, as best 6 you recall, of what that was referring to?</p> <p>7 A. No.</p> <p>8 Q. Do you recall discussing that notion 9 that the AWP for a drug is set essentially with 10 an eye towards third-party reimbursement?</p> <p>11 A. No.</p> <p>12 Q. Do you ever recall anybody mentioning 13 that topic?</p> <p>14 A. No.</p> <p>15 Q. Okay, do you ever recall any discussion 16 while you were at Abbott of the notion that 17 physicians or pharmacies need to be paid more 18 than their actual acquisition cost of a drug in 19 order to make sure to provide them with an 20 adequate profit or payment for the services that 21 they render?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 336</p> <p>1 A. Is this a hospital, alternate site, 2 office?</p> <p>3 Q. I'm referring to physicians and 4 pharmacies.</p> <p>5 A. Physicians and pharmacies?</p> <p>6 Q. Physicians and pharmacies. Sorry.</p> <p>7 A. I'm going to say no.</p> <p>8 Q. Do you have any knowledge on that 9 subject one way or the other?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did you ever hear any 12 conversation or see any documents while you were 13 at Abbott about the concept of trying to insure 14 that the reimbursement for the ingredient portion 15 of a drug needs to be set high because the 16 service and dispense -- and/or dispensing fees to 17 the providers was too low?</p> <p>18 A. No.</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 BY MS. THOMAS:</p> <p>21 Q. Okay, if you would look, sir, please, 22 to the next attachment to that same exhibit,</p>
<p style="text-align: right;">Page 335</p> <p>1 THE WITNESS: As I testified earlier, 2 the reimbursement price for a product must 3 compensate the doctor or pharmacist for the cost 4 of acquiring the product and their services and 5 some return.</p> <p>6 BY MS. THOMAS:</p> <p>7 Q. Do you ever recall any discussion while 8 you were at Abbott of the concept that it would 9 be appropriate for the -- well, strike that.</p> <p>10 Are you aware, sir, in general that 11 physicians and pharmacies receive more than just 12 a drug ingredient cost component of reimbursement 13 --</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 BY MS. THOMAS:</p> <p>16 Q. (Continuing) -- either a service fee or 17 a dispensing fee?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: In what setting?</p> <p>20 BY MS. THOMAS:</p> <p>21 Q. In -- being reimbursed by a government 22 --</p>	<p style="text-align: right;">Page 337</p> <p>1 Plaintiff's Exhibit 1121, Abbott page 53266 2 called, "Competitive bidding and you, the 3 consumer."</p> <p>4 A. (Witness so doing).</p> <p>5 Q. Do you have any idea whose document 6 this is?</p> <p>7 A. No, ma'am.</p> <p>8 Q. Do you have any idea whether it's an 9 Abbott document?</p> <p>10 A. I have no idea.</p> <p>11 Q. In the second paragraph, about two- 12 thirds of the way down, when it says, "Our 13 coalition strongly believes in competition" --</p> <p>14 A. I have no idea.</p> <p>15 Q. You have no idea what that means --</p> <p>16 A. Who that is.</p> <p>17 Q. -- by "our coalition"?</p> <p>18 A. Right.</p> <p>19 Q. If you would look towards the end of 20 the document where it says, "The coalition to 21 preserve healthcare quality and competition" --</p> <p>22 actually, it's at the very end. I'm sorry.</p>

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<p style="text-align: right;">Page 338</p> <p>1 A. Which page?    2 Q. 53269.    3 A. 53269. 53269?    4 Q. Yeah. I believe it's the last page.    5 Well, it's the last page of my copy of it.    6 A. Mine says --    7 Q. I think you're on it. No?    8 A. "The President can be reached by    9 contacting the White House at 202"?    10 Q. Yes.    11 A. Oh.    12 Q. I'm sure that's a direct dial number    13 too.    14 A. I'm sorry.    15 Q. But maybe Bush had it changed.    16 A. I was astounded.    17 Q. This was Clinton's. Perhaps it's    18 different with Bush.    19 A. Okay.    20 Q. In any event, do you see "the coalition    21 to preserve healthcare quality and competition."    22 A. I -- as stated.</p>	<p style="text-align: right;">Page 340</p> <p>1 refer to it as.    2 Given what you had indicated you    3 understood to be its purpose, which was sharing    4 information across divisions, was there some    5 reason -- well, strike that.    6 Did you decide that sharing information    7 about reimbursement was not serving any purpose    8 or was no longer important for some reason?    9 MS. TABACCHI: Object to the form.    10 THE WITNESS: I believe it died of    11 inertia. There was no drive from the divisions or    12 corporate to keep it alive.    13 BY MS. THOMAS:    14 Q. Was it your perception that anyone    15 within Abbott affirmatively thought that that    16 group should not continue because it posed some    17 problem?    18 A. No.    19 Q. So basically you stopped getting    20 pressure from above, you stopped setting it up,    21 and nobody came to meetings because nobody called    22 them?</p>
<p style="text-align: right;">Page 339</p> <p>1 Q. Have you -- do you have any    2 recollection of having heard of that coalition?    3 A. No, ma'am.    4 Q. Does the name underneath it, the    5 National Association of Medical Equipment    6 Services, mean anything to you?    7 A. No, ma'am.    8 Q. Sir, you were asked earlier if you were    9 aware of government investigations or litigation    10 with various drug companies.    11 I just want to ask you specifically do    12 you have any recollection in about the year of    13 2000, 2001 of hearing about a settlement by Bayer    14 with the government concerning an AWP lawsuit?    15 A. I do not.    16 Q. Do you recall hearing anything about    17 settlements by several drug companies with the    18 State of Texas in about 2003 regarding price    19 reporting practices?    20 A. I do not.    21 Q. You testified about the demise or end    22 of the Medicare Working Group, whatever you would</p>	<p style="text-align: right;">Page 341</p> <p>1 A. That's my recollection.    2 Q. You've indicated earlier that you gave    3 Mr. Moorehead monthly reports that might    4 reference the Medicare Working Group if there was    5 anything significant that happened.    6 Were those written reports, sir?    7 A. Yes.    8 Q. To your knowledge, do they still exist?    9 A. I have no knowledge.    10 Q. When you left your position, do you    11 know what you did with your copies of those    12 monthly reports?    13 A. No.    14 MS. THOMAS: We'll just take a quick    15 break --    16 THE WITNESS: Sure.    17 MS. THOMAS: -- and then we won't --    18 THE VIDEOGRAPHER: We are off the    19 record at 5:23 p.m.    20 (Recess taken.)    21 THE VIDEOGRAPHER: We are back on the    22 record at 5:26 p.m.</p>

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<p>1 MS. THOMAS: This seems very    2 anticlimactic, but we are finished. I have no    3 further questions unless anyone else does.    4 MR. STUART: No.    5 MR. SISNEROS: No.    6 MS. TABACCHI: I will ask the court    7 reporter to mark the transcript under the    8 protective order, please. Thank you.    9 THE VIDEOGRAPHER: We are off the    10 record at 5:27 p.m. with the conclusion of the    11 deposition of James Miller.    12 (WHEREUPON, FURTHER DEPONENT    13 SAYETH NOT)    14    15    16    17    18    19    20    21    22</p>	<p>1 STATE OF ILLINOIS )    2 ) ss:    3 COUNTY OF COOK )    4 I, Deborah Habian, a Certified Shorthand    5 Reporter within and for the State of Illinois, do    6 hereby certify:    7 That previous to the commencement of the    8 examination of the witness, the witness was duly sworn    9 to testify the whole truth concerning the matters    10 herein;    11 That the foregoing deposition was reported    12 stenographically by me, was thereafter reduced to    13 printed transcript by me, and constitutes a true    14 record of the testimony given and the proceedings had;    15 That the said deposition was taken before    16 me at the time and place specified;    17 That the reading and signing by the    18 witness of the deposition transcript was agreed upon    19 as stated herein;    20 That I am not a relative or employee of    21 attorney or counsel, nor a relative or employee of    22 such attorney or counsel for any of the parties    1 hereto, nor interested directly or indirectly in    2 the outcome of this action.    3 IN WITNESS WHEREOF, I do hereunto set my    4 hand this ____ day of _____, 2007.    5    6 DEBORAH HABIAN, CSR, RMR, CRR, CBC    7 Notary Public    8 CSR No. 084-022432</p>
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<p>1 IN THE UNITED STATES DISTRICT COURT    2 FOR THE DISTRICT OF MASSACHUSETTS    3 IN RE: PHARMACEUTICAL )    4 INDUSTRY AVERAGE WHOLESALE )    5 PRICE LITIGATION ) MDL No. 1456    6 ----- Civil Action    7 This document relates to: ) No. 01-12257-PBS    8 United States of America, )    9 ex. rel. Ven-a-Care of the )    10 Florida Keys, Inc., ) Hon. Patti Saris    11 vs. )    12 Abbott Laboratories, Inc., ) Magistrate Judge    13 CIVIL ACTION NO. 06-11337-PBS ) Marianne Bowler    14    15 I hereby certify that I have read the    16 foregoing transcript of my deposition given at the    17 time and place aforesaid, consisting of pages 1 to    18 283, inclusive, and I do again subscribe and make oath    19 that the same is a true, correct, and complete    20 transcript of my deposition so given as aforesaid and    21 includes changes, if any, so made by me.    22</p> <p>18</p> <p>19 _____    JAMES E. MILLER    SUBSCRIBED AND SWORN TO    before me this ____ day    of _____, A.D. _____.    21 _____    22 Notary Public</p>	

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